United States Court of Appeals

for the Second Circuit

APPENDIX

74-1693

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P/S

United States Court of Appeals

For the Second Circuit

Docket No. 74-1693

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellee,

—against—

TILNEY & COMPANY,
FREDERICK TILNEY,
Defendants-Appellants,

On Appeal From the United States District Court
for the Southern District of New York

DEFERRED JOINT APPENDIX

Volume IV — Pages 1074 to 1419

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UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -against- TILNEY & COMPANY, FREDERICK TILNEY, Defendants.	67 Civ. 4676 FURTHER AFFIDAVIT IN OPPOSITION TO APPLICATIONS FOR FEES AND ALLOWANCES

FREDERICK TILNEY, being duly sworn, deposes and says:

I reside at Centre Island, Oyster Bay, New York 11771;

I am the general partner of Tilney & Company, a defendant with myself in the above action;

1. That this affidavit is submitted in response to the Reply Affidavit of Robert G. Benisch, Esq.; that deponent recognizes, pursuant to lines 3 through 8, page 42 of the transcript of a hearing in this Court of April 19, 1972, that no further affidavits were to be submitted; accordingly your deponent requests that the affidavit of Mr. Benisch not be accepted or considered by the Court; however, it is respectfully requested that this Affidavit be accepted with the Reply Memorandum of my counsel if the affidavit of Mr. Benisch (hereinafter referred to as the Benisch affidavit) is to be considered; that the acceptance of the affidavit dated April 27, 1972 submitted by I. Alan Harris, Esq. (hereinafter referred to as the Harris affidavit) in support of his request for the order to show cause in connection with certain affidavits submitted as supporting documents to deponent's affidavit (hereinafter referred to as Tilney affidavit in support) dated April 17, 1972 respectfully require answers which are embodied herein:

2. That I am not an attorney at law but have had extensive experience

in handling many complex legal matters in conjunction with counsel particularly in the field of municipal finance;

3. That I have had the experience of writing various pieces of legislation with counsel involving municipal and governmental finance which were enacted;

4. That I have acted as trustee for substantial trust funds, executor of estates and similar matters;

5. That I have been advised as to the current standards and practices prevailing in receiverships by my counsel during conferences and through correspondence extending over the period of the last four years; that from all indications it appears that the standards in an equity receivership are similar to the standards and practices in bankrupticies but the mere fact that there is an equity receivership does not alter the requirements that meticulous records of time be maintained, that the highest principles of fiduciary responsibility be observed, that the rates charged for services be substantially lower than commercial rates, that the equity interest does not constitute a fund to be seized at will by the administrators through over long delay in settlement with creditors for the administrators' own peronsonal benefit regardless of the cause of the receivership;

6. That one does not have to be an attorney to be able to differentiate between the time reports of an attorney where work can be grouped under headings through similar descriptive phraseology;

7. That paragraph 4 of the Benisch affidavit fails to indicate for the benefit of the Court that the time study prepared by Governmental

Statistical Corporation broke down the time spent by the ex-receiver who resigned for cause, the surviving receiver, counsel and accountants into 103 individual categories; that in so breaking down the time the purpose was to permit minute inspection of the work allegedly performed in the matter of the receivership; that in attacking item by item Exhibit A to the Tilney affidavit in support Mr. Benisch throughout his affidavit recognizes that the figures in the exhibit most certainly have some validity;

8. That paragraph 4, subparagraph (a) of the Benisch affidavit

complains that neither he nor the Court could understand the heading "general time" or 'time not allocated;" that general time in the study was time to which no specific duties were assigned that would meet the test of any of the other 102 categories of work definitions, while time not allocated was time noted without any explanation of any kind as to the work done; substantial portions of unallocated time were derived from block figures or wild estimates of time which in the case of I. Alan Harris in some instances apparently included time when he was in bed according to his application for fees;

That in view of the small size of the estate and the moderate number of recognized creditors (137) and the limited number of asset items (90) the accumulation of general or unallocated time to the total amount of over $30,000 is unrealistic and impossible to understand;

9. That in paragraph 4 (b) of the Benisch affidavit the deletion of time charges in the Waddington Bank matter is disputed; that Mr. Studley, according to the Court record, did purchase 787.25 shares of The Waddington

Bank stock from the estate and paid for the same in July 1968 at a price of $50 per share is not contested;

That, as reported in the Court record, Joseph C. Hogan had previously sold the stock to D. Raymond Kenney through Blyth & Company, with Blyth to pay $47 per share; that after this sale the stock was offered in the Street at $65 per share prior to the cancellation of the Blyth sale; that the cancellation was due to pressure applied on Mr. Hogan and on Blyth & Company by I. Alan Harris to break the trade;

That for several weeks a disagreement existed between Messrs. Hogan and Harris as to Mr. Hogan's authority to sell the shares to D. Raymond Kenney through Blyth & Company and is evidenced in the Court record;

That when the trade with Blyth & Company representing D. Raymond Kenney was broken so that Mr. Studley could acquire the 787.25 shares of stock at an advance of $3 per share Blyth & Company was required to pay D. Raymond Kenney $4,000 to $5,000 by way of compensation for breaking the trade; that this payment would indicate that D. Raymond Kenney was able to persuade Blyth

& Company to indemnify him to the extent of $6 per share;

That this entire bizarre transaction could only lead the United States Securities and Exchange Commission to label it "tainted" and to request the recission of the sale;

That it is impossible to understand how the difference in the value of the indemnification paid by Blyth to D. Raymond Kenney plus the three additional points which totaled about $7,000 could have been involved in a

transaction with a total sales value to the estate of less than $40,000; that such wide ranges are hardly compatible with fair and equitable dealings;

That the reoffering in the Street at $65 a share suggests a much higher value for the stock than the $50 a share paid by Mr. Studley;

That when the Benisch affidavit speaks of Mrs. Tilney's voluntary sale of 96 shares of the stock held by her and her children as part of the same transaction it should be noted that there would have been little purpose in Mrs. Tilney's retaining a minority interest in the bank since her shares when consolidated with Tilney & Company's only increased effective control and since other interests were in the bank it was quite obvious to her that her shares and those of her children would have little value after such acquisition; that the rescission of the sale of the sale of 787.25 shares requested by the Securities and Exchange Commission was carried out without a specific order but the shares sold by Mrs. Tilney on behalf of her children and herself were not included in the rescission and remained in the hands of Messrs. Harris and Studley and were subsequently purchased by the buyer of the 787.25 shares at $60;

That no appraisals of these shares were ever obtained although appraisals were regularly requested by deponent on all inactive personalty as well as all realty;

That the subsequent sale by auction on September 24, 1969 of the shares returned to the surviving receiver was not carried out in a manner to provide the best results, no independent appraisal being available to prospective bidders who would have to rely on the sketchy information distributed and the limited extent of information in advertising;

That prospective bidders had available to them the Court records which clearly indicated the bizarre original transaction and its taint and, further, such prospective bidders had access to the uncomplimentary remarks regarding the condition of the bank made by I. Alan Harris as a pretext for his involvement as outlined in the Court record;

That prospective bidders were not clearly informed of the relationship of the block of stock plus Mrs. Tilney's shares as being effective control;

That the cost of the time claimed by the surviving receiver and his retainers in the resale of the Waddington stock represented 33 1/3% of the value received;

That between the time of the original sale to Mr. Studley in July 1968 and the eventual auction of the recovered stock at the end of September 1969 a marked change in economic climate had occurred which in itself would have varied the price materially;

That the statements of Mr. Harris in the Court record regarding the condition of The Waddington Bank as "terrible" were self-serving; that the facts regarding the condition of the bank are not supported by actuality was attested to in the affidavit of Harry Pack, Esq., currently Chairman of the Board of The Waddington Bank and major stockholder thereof since September 24, 1969, Exhibit D to Tilney affidavit in support; that the total number of shares of The Waddington Bank outstanding was 2,500 and that the Tilney holdings of 883.25 shares quite obviously was effective control;

10. That paragraph 4 (c) of the Benisch affidavit asserts that "there was serious question as to whether Mr. Tilney had diverted assets of his and the partnership to Mr. Postley in anticipation of the Securities and Exchange

Commission taking action against Mr. Tilney and Tilney & Company;"

That Mr. Benisch fails to note that the transaction with Mr. Postley was not between Mr. Tilney and Mr. Postley but rather with Mr. Postley and Tilney & Company, Inc.;

That this information was readily available to the surviving receiver and counsel and that even their own accountants recognized this fact in their intitial analysis dated May 31, 1968;

That a diligent examination of the records would have eliminated the necessity of a hearing involving Mr. Postley at great expense to the estate and waste of time to Mr. Postley and this deponent and extra counsel fees;

11. That in paragraph 4(d) of the Benisch affidavit reference is made to Item 31 of Table A of Exhibit A of the Tilney affidavit in support which refers to a trip to Alaska made by Mr. Benisch and ex-receiver Harris in August 1968; that the details of any work performed there had never before been documented by Mr. Benisch and that in the case of Mr. Harris his application filed in May 1970 was so general regarding the Alaska trip as to be meaningless; that such benefits as the Benisch affidavit claims the estate derived from the Alaska trip seem very nebulous and actually the actions of Messrs. Harris and Benisch did damage to the estate and to deponent rather than being beneficial;

12. That in paragraph 4 (e) of the Benisch affidavit the view is expressed that the enforcement of a judgment of over $600,000 against Governmental Statistical Corporation was essential to the proper administration

of the estate and that the receiver had full authority to proceed pursuant to instructions from the Court on September 24, 1969;

That such instructions were issued is not denied but the instructions were based upon unreliable figures portraying gigantic liabilities and minimal assets, wholely at variance with the facts as subsequent reports of the accountants established;

That in executing his judgment against Governmental Statistical Corporation and seizing its real properties at a Sheriff's sale, the receiver did not aid the current cash position of the estate but rather detracted from it and at the same time the receiver in taking this step completely overlooked the rights and interests of minority stock and note holders of Governmental Statistical Corporation and took a step which actually destroyed a going concern value of which he was the largest holder;

13. That paragraph 4 (f) of the Benisch affidavit disputes an allegation of impropriety in the sale of Matinecock Bank stock as a basis for eliminating time charges in that matter; the facts of that matter are set forth in the

affidavit of Mr. Thomas Bellingham sworn to April 19, 1972;

14. That paragraph 4 (g) of the Benisch affidavit disputes the elimination of time charges in connection with the contempt proceeding brought into this Court in an attempt to gag deponent and deponent's wife;

That the contempt proceedings could not and did not produce any additional revenue or recovery for the estate;

15. That paragraph 4 (h) of the Benisch affidavit disputes the elimination of time spent in conferring with ex-receiver Harris;

That upon his relief Mr. Harris turned over all books and records to the surviving receiver and there should have been no need for further communication due to the limited size of the estate; furthermore, the remaining receiver, Mr. Hogan, and his attorneys should have been cognizant of all receivership matters at all times; if they were not, the receivership estate should not have to pay for their being briefed by Mr. Harris;

16. That paragraph 5 of the Benisch affidavit disputes a reduction to 50% on the time charges on a list of items in Table B of Exhibit A of the Tilney affidavit in support;

That such reductions were made on specific items in most parts since the time alleged could not or should not have been spent in view of the smallness of the estate and the small number of creditors, liability and asset items;

17. That in paragraph 5(a) of the Benisch affidavit reference is made to Item 3 of Table B of the Tilney affidavit in support; that he neglects to recognize that daily time records are a requisite in all types of businesses whose commodity is time, that the accumulation of such time in an application for allowances is a simple matter requiring only the work of copying applicable entries from daily time sheets, that these records involved a total of 165 pages on the part of the ex-receiver, the remaining receiver, counsel, and accountants, indicating a cost per page of approximately $48.00 for duplicating

a record which must be kept by attorneys, accountants, and businessmen in order to satisfy the normal accounting procedures or to support records that must be available for examination by the Internal Revenue Service and

other governmental units in connection with income tax returns;

18. Paragraph 5 (b) of the Benisch affidavit refers to Item 17 of Table B of the Tilney affidavit in support. The 50% reduction in the charge for obtaining a judgment against D. Raymond Kenney & Company on an account stated and making a settlement thereof for $34,000 less than the judgment over strong objection is entirely justified; that D. Raymond Kenney had agreed prior to the receivership to settle this claim at par, partly in cash and partly in his own company's subordinated notes; that this arrangement could easily have been made with no less cash being received than the actual minimal settlement of $85,000;

Failure on the part of counsel for the receiver to obtain a receipt and release in favor of the receivers permitted the wasteful counterclaim action;

That the assertion in the Benisch affidavit that the deponent asked that a receipt and release not be obtained from D. Raymond Kenney in favor of the receivers in the account stated is untrue;

That the only request of deponent to Robert G. Benisch, Esq., counsel to the receivers, was that no block be put in the way of an eventual damage suit against D. Raymond Kenney by deponent;

That on January 3, 1972, deponent wrote the surviving receiver, Joseph C. Hogan, requesting authority to proceed with a list of ten litigations on behalf of Tilney & Company or deponent and in one case deponent's wife, Dorothy M. Tilney, pursuant to the authority vested in deponent by the Court to proceed in such litigations with the acquiescence of then-receiver Harris who indicated he would make any necessary arrangements with counsel obtained providing there was no cost to the estate for such litigation;

That deponent requested an answer within seven days as to receiver Hogan's position on these litigations and that on his failure to respond by

January 10, 1972, "I will presume that this letter constitutes the procedures referred to by Mr. Harris and that you are releasing me to proceed without any further action on your part."

That no answer having been received to this communication an action against D. Raymond Kenney & Company was instituted in the New York State Supreme Court for damages in the amount of $250,000;

19. That in the Benisch affidavit paragraph 5 (c) reference is made to the receivers' cost of defending the action of the City of Nome against Tilney & Company, Frederick Tilney, Governmental Statistical Corporation, and Dorothy M. Tilney;

That attached hereto and made a part hereof as Exhibit A is a portion of a transcript of a hearing before this Court on August 6, 1968, pages 220 through 224, which dealt with the Nome situation;

That also attached is a letter from the firm of Mudge Rose Guthrie & Alexander dated June 17, 1971, made a part hereof and marked Exhibit B, enclosing the pertinent documents issued by Boettcher & Company and the City of Nome; that these papers clearly indicate that "the City shall provide the underwriter with a release from Tilney & Company of any claim against the underwriter."

That in the notes to Item 18 of Table B, Exhibit A of the Tilney affidavit in support there is a synopsis of the status of the relations of the City of Nome with Tilney & Company and the litigation which created the administrative costs referred to in Item 18;

That also attached and made a part hereof as Exhibit C is a copy of a letter written by deponent to Donald A. Burr, Esq., on December 9, 1971, which supports the position of the worthlessness of the suit of the City of Nome;

That the Court is respectfully requested to give weight to this matter since there are no obscure innuendos contained in the notes to Item 18, Table B of Exhibit A of the Tilney affidavit in support and that the material is not in any way frivolous;

20. That in the Benisch affidavit, paragraph 5 (d), reference is made

to reports and correspondence furnished by deponent which in almost every instance was never responded to and, therefore, it must be presumed no attention was paid to the material to the great detriment of the estate;

That it is respectfully submitted that this lack of meaningful communication and to the results obtained;

That it has been difficult to ascertain who has actually been operating the receivership -- whether it be the counsel or the surviving receiver. All reference to decisions are referred to counsel with all types of persons contacting the receiver; prior to the relief of I. Alan Harris, Esq., through resignation invited by deponent, all matters regarding the receivership were cleared through him; since his forced retirement, the laboring oar of the receivership was taken over by counsel and all decisions of the receivership apparently had to be cleared through him; that deponent through his counsel has written innumerable letters on various subjects to receiver Hogan in anticipation of the termination of the receivership and other matters; that none of these letters has been answered; that the closing of an estate of a decedent is being held up by the failure of response and that deponent has

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received three notices in connection with the transfer of stock of Governmental Statistical Corporation involved in the estate; that matters of salary adjustments with former employees who continued working after the inception of the receivership and an outstanding statement of Louis D. Blum & Company have gone unanswered for years;

That the normal cost of collecting a small debt from deponent's own experience is usually about 1/3 of the debt and not more than the debt itself;

21. That the Benisch affidavit in paragraph 5 (e) takes exception to the reduction to 50% of time charges in the matter of the liquidation of City Commerce Debentures and Matanuska Valley Bank stock sale, items 81 and 82 in Table B of Exhibit A of the Tilney affidavit in support; that this exception must be refuted;

That the contention of Mr. Benisch that the funds were needed is untrue; there were sufficient funds on hand at the time of these liquidations to

pay 100% of all creditors' claims as finally paid plus interest and leave substantial cash available for the payment of administrative expenses and a cash disbursement to deponent without further liquidation; that as of September 30, 1970 total cash or cash equivalent available in the hands of the receiver amounted to approximately $385,000 with accruals (see report of September 30, 1970 of Greidinger, Hoffberg & Oberfest); total non-family claims eventually paid at 100% amounted to about $260,000 which represented a complete and final distribution; that interest on September 30, 1970 would

have amounted to about $25,000; that the interest plus the disbursement to non-family creditors would have required only $285,000 to close all non-family claims finally paid in 1971; that on September 30, 1970 there was approximately $100,000 in cash to cover administrative fees and allowances which had been filed on an interim basis in 1970 in the greatly inflated amount of $210,000;

That in December 1970 a motion to terminate the receivership and pay administration expenses of $65,000 was placed before the Court; that with administration expenses set at that realistic figure at the end of 1970 deponent would have received $35,000 in cash; that the liquidation of the Matanuska Valley Bank stock and the City Commerce Debentures was unnecessary and cost the estate $30,000; that in January of 1971 it was quite apparent that the estate could be closed and that only the unrealistic fees of the receivers and their retainers were blocking the closing; that this situation had prevailed since 1968;

That a receiver is not supposed to play the market is conceded but he is also not supposed to sell securities below the market as in the case of the Matanuska Valley Bank stock; that appraisals pursuant to applicable statutes would have revealed that the City Commerce Debentures would be paid at par at maturity, July 1, 1971;

That extracts from the 1970 annual report of the Alaska Bank Shares, the successor corporation to City Commerce, indicating the payment of the City Commerce Debentures at par plus interest are attached hereto and marked Exhibit D;

22. That in the Benisch affidavit paragraph 5 (f) relating to work of the accountants Mr. Benisch fails to note that the books and records of

Tilney & Company had been certified by Messrs. Louis D. Blum & Company, Certified Public Accountants, as of August 9, 1967, and that the books and records maintained by the firm which were available on that day without audit proved to be absolutely correct with a few minor discrepancies and that said books and records were brought up to date as of October 31, 1967 by Messrs. Louis D. Blum & Company at the request of the receivers to close Tilney & Company's fiscal year; and that B. Bernard Greidinger & Company merely had to copy the figures from the Louis D. Blum reports and were furnished work sheets thereof; and that no certified audit was ever made by B. Bernard Greidinger & Company of the books and records of associated companies although said books and records were made available to them for their inspection; that at no time during these proceedings has B. Bernard Greidinger & Company, or its successor firms, ever made a certified audit of Tilney & Company, your deponent's affiliated companies or Dorothy M. Tilney; that had certified audits been made without disclaimers included in the unaudited reports the one report to creditors issued under the date of July 31, 1968 and based on the uncertified report of B. Bernard Greidinger & Company dated May 31, 1968, would never have been issued in the form that it was; that due to this report of July 31, 1968 most creditors of Tilney & Company and Frederick Tilney were led to believe that they would not receive 100% on the dollar and that this expected reaction was the purpose of the issuance of the report which it must be noted was attached to a letter dated October 31, 1968 but which was in fact not mailed until December 17, 1968; that the receivers and their retainers were obviously wrong in refusing to rely on the certified audit of Messrs. Louis D. Blum & Company, which it has now been established beyond any reasonable doubt to be a true, valid and certified

statement worthy to be received, and Mr. Benisch's contentions (including the reference to taint on the books of Tilney & Company) are obviously made to cover their mistakes; that in referring to"a person guilty of the acts which are a matter or record", deponent respectfully states he is not guilty of any wrongful acts and had not been so found; that in further attacking deponent's background activities "both prior to and during this receivership" Mr. Benisch's affidavit is not based on substantial facts or specifics that have any validity

in these proceedings and should be disregarded by the Court;

That in preparing the detailed certified audit on the affairs of Tilney & Company as of August 9, 1967 and for the subsequent work accomplished in bringing the books and records of Tilney & Company forward to October 31, 1967, Messrs. Louis D. Blum & Company rendered a statement to Tilney & Company for completing the audit in the amount of $12,272.03, only $10,000.00 of which was allowed by the receiver in settlement of Louis D. Blum & Company's outstanding account; that further Messrs. Louis D. Blum & Company have rendered the surviving receiver a statement in the amount of $6,825.00 for bringing the affairs of Tilney & Company and Dorothy and Frederick Tilney up to October 31, 1967, the close of their fiscal year, and for preparing tax returns for Tilney & Company, the partnership, and for the general and limited partners thereof; that this latter charge has not yet been approved for payment by the surviving receiver and that the work covered in these two statements is more than equivalent to all of the work done by B. Bernard Greidinger & Company and its successors for which they are asking compensation

in the amount of $89,180.00 and that within this figure specifically $42,180.00 covered in items 102 and 103 of Table B of Exhibit A of the Tilney affidavit in support were charges for copying reliable certified figures;

23. That paragraph 6 (a) of the Benisch affidavit denies that there were "poor relationships established with certain creditors"; that this statement is patently untrue; creditors almost without exception have indicated that the services and information received from the receivers and their retainers have been inadequate; and that the lack of communication between the receivers and the creditors over almost a three-year period until creditors rebelled led a number of customer creditors to write off their viable accounts with Tilney & Company as bad debts or capital losses when quite obviously such writeoffs would not have been justified by the existing true facts which came to light only when relentless pressure was applied on the surviving receiver to move on and close the receivership and make a 100% distribution.

That these creditors were upset, dismayed and outraged by the situation when their funds and securities were held up cannot be denied; that

the speedy settlement of the receivership rather than a long delay would have gone far to calm this anger and mental anguish as would have appropriate, truthful and meaningful communications;

That the delay in closing the receivership made it appear that these creditors had been swindled by Tilney & Company and deponent; that the books and records of Tilney & Company clearly indicated the position of every

creditor of every class in unmistakable form and that the allegations by Mr. Benisch that creditors' funds were used for any purpose outside of Tilney & Company is false and unsupported by fact; that Mr. Benisch indicates he wrote 200 letters in response to inquiries of creditors is undoubtedly true; that a report was circulated showing the financial status of the firm is also true and said report is attached hereto and made a part hereof as Exhibit E; that many customer creditors moved away from Alaska and were lost track of by the receivers is not to be disputed; that largely through the efforts of deponent's wife most were located in early 1971; that these creditors had filed claims in early 1969 and many of their current addresses had changed since that time and no follow-up system had been established by the receiver; that Mr. Benisch's statement that deponent is only concerned for his customers' interests when it serves deponent's financial situation is so ridiculous on the surface and in the face of all events that it need not be answered and the Court should disregard such a wild and frivolous statement;

That the affidavits submitted in support of the Tilney affidavit in support dated April 17, 1972 totaled 13; of these 12 were affidavits of former customer creditors of Tilney &Company and one of a substantial commercial creditor of deponent; that since April 19, 1972, two additional affidavits from creditors have been received; that the total paid claims represented by the affidavits amount to $68,000 and are in excess of 25% of all paid claims rather than "a few self serving affidavits"; that additional affidavits can be easily obtained;

That an analysis by an unbiased third party of the correspondence and files of the receivers and their retainers would clearly establish the facts in regard to the handling of creditors' requests for information;

24. That the Benisch affidavit in paragraph 6 (c) indicates a lack of understanding of Table C, of Exhibit A of the Tilney affidavit in support; that the actual breakdown of time in that table consolidated covers three general areas: Item 11 covers the time spent in handling priority claims which numbered four with a total value of $2,990.23; that other priority claims, exclusive of real property taxes, such as income taxes prior to 1967 and the like were handled entirely by deponent and his accountants to the satisfaction of the receivers; that the New York City claims included in the four items against Tilney & Company were settled through the efforts of deponent on authority from the receiver; that the priority claims actually handled by the receivers or accountants were limited to federal and state withholding taxes for the period just preceding Tilney & Company's suspension of operations and several New York City use and occupancy or similar taxes;

That also in Table C are item numbers 12, 13 and 69 with a total value of $6,680 representing the time spent by the receiver and his retainers in contesting claims of members of deponent's family; that the balance of the items in Table C, $28,181, covered the notification of, correspondence with and eventual final payment of a total of 96 customer creditors, 23 commercial creditors of Tilney & Company including priority creditors and 17 creditors of deponent personally;

25. That paragraph 6 (c) of the Benisch affidavit suggests that claims for deponent's children were made by deponent; this is obviously untrue; that deponent engaged the services of Hon. Joseph C. Carlino to represent the deponent's minor children as their general guardian; that at

the behest of the receiver Mr. Carlino's appointment was not accepted and in lieu thereof Arnold Bauman, Esq., now a United States District Court Judge in the Southern District, was appointed guardian ad litem for the children and that he filed the claims on their behalf; that certain other claims were later filed by the children's natural guardian, their mother; that at no time did deponent file any claim for members of his family or for any affiliated companies;

26. That the Benisch affidavit in paragraph 6 (d) questions certain of the smaller items in Table C of Exhibit A of the Tilney affidavit in support; that these were included for the sake of clarity in breakdown; that particular attention should be paid to item 90 which it must be assumed covered the time consumed by the receiver conferring with and writing to a customer creditor regarding a substantial check forwarded to him unsigned by the receiver;

27. That paragraph 7 of the Benisch affidavit makes reference to Table D of Exhibit A to the Tilney affidavit in support -- "The notes to Table D are replete with misstatements"; that Mr. Benisch fails to be specific and makes only general statements in this regard;

28. That the Benisch affidavit in paragraph 8 (a) questions deponent's presumption as to the legal hourly rates charged by receiver Hogan in his normal practice of law; that the rates applied in this receivership would result in an annual gross income on the basis of a 1,600 hour year to a figure in excess of $110,000 is a matter of simple arithmetic; that in the same paragraph Mr. Benisch points out that the fees requested by Mr. Hogan

covered a period of 4 1/2 years of work and covered a vast amount of time spent on receivership matters;

That it is respectfully submitted that the period covered by the application for fees and allowances is 4 years and 14 days; that it is recognized, however, that the receivership is not closed and that almost 4 1/2 years have passed since the appointment of the receivers; that Mr. Hogan, the still surviving receiver, has reported total hours of 1,012 1/2; that assuming a 1,600 hour year the time alleged in the application of Mr. Hogan would represent 16% of the available hours during the period of 4 years; that on this assumption Mr. Hogan's gross income for that period at the rates indicated should have amounted to well over $400,000; that Mr. Benisch's assertion that it was through "tireless efforts, etc." is a self-serving statement which presupposes that the 100% distribution to creditors was not to be attained except by the efforts of Mr. Hogan; that the exact opposite is true; that the

100% distribution could have been accomplished within six to eight months after the appointment of the receivers since the threat of the Nome suit which temporarily blocked the closing of the receivership could have been avoided by proper procedures on the part of the receivers as heretofore noted;

That this fact is clearly demonstrated in the first report of status delivered to the receivers based on the condition of the receivership on July 31, 1968; that this report is attached hereto and made a part hereof as Exhibit F;

29. That paragraph 8 (b) in the Benisch affidavit asserts that the remainderman in an equity receivership in effect has no control over the final distributions of the equity estate assets and the payment of fees for services rendered to the estate; this is obviously incorrect since while this Court can pass on the fees the remainderman still has other remedies;

30. That paragraph 8 (c) of the Benisch affidavit disputes obvious financial facts; that he completely disregards all of the interests and property involved in this estate except those of the receivers, their counsel and accountants; that the rights of minority interests are swept aside as by a tidal wave which in itself relies on factors not within the law;

31. That the Benisch affidavit in paragraph 8 (d) labels testimony in the Tilney affidavit in support at the bottom of page 8 in reference to Joseph C. Hogan as "filled with unsupportable assumptions and innuendos"; That every item and every word in the first paragraph regarding Joseph C. Hogan are in the records of this Court; see affidavit of Mr. Thomas Bellingham sworn to April 19, 1972;

32. That paragraph 8(e) of the Benisch affidavit accuses deponent as setting himself up as a legal authority; that deponent repeatedly in the presence of witnesses advised the receivers and Mr. Benisch himself that appraisals of not readily marketable securities (personalty) should be made before liquidation is a matter of record; that deponent did not have to be an attorney to know the practicalities and the purpose of Section 2004, Title 28

of the United States Code; that even had this section never been enacted by the Congress the procedures outlined in it would still have been required under the "rule of the prudent man"; that the damage done to this estate by the failure to follow time-tried procedures is now a matter of financial history;

That deponent's request for a reduction in counsel's fees in the reduced amount of $53,674, the amount shown in Table G of Exhibit A of the Tilney affidavit in support, to $40,000 is not wholly dependent upon counsel's lack of attention to the basic fundamentals of law as evidenced in their complete disregard of Sections 2001 and 2004 now Title 28 of the United States Code; that counsel's attention had to be invited to these sections by counsel for the United States Securities and Exchange Commision is a matter of record in this Court; that deponent is a layman and is not supposed to and should not be put in the position of having to advise learned counsel as to statute; that counsel's acquiescence to the glaring improprieties regardless of Title 28, Sections 2001 and 2004 of the United States Code, involved in the Waddington transaction is additional grounds with many other items for reducing their fees;

33. That the Benisch affidavit in paragraph 9 relies in defense of the accountants' fee on previous paragraph 5 (f) with the remark that no further comment is needed;

No proof is offered that there is any error in the statements at the bottom of page 9 of the Tilney affidavit in support;

34. That the Benisch affidavit in the second paragraph of paragraph 9 at the bottom of page 18 goes to great lengths to indicate that "the accountants and the receiver were in a great many instances unable to place

a value on various securities for the reason that such securities had absolutely no current established market"; that this statement by Mr.Benisch is only a half truth; markets can always be established for any given commodity provided real effort is made to ascertain the underlying fundamental facts regarding the asset. It was for this reason that Sections 2001 and 2004 of Title 28 of the United States Code was enacted to prevent reckless disposition of assets turned over to receivers for liquidation or administration;

That deponent grossly overvalued assets is a misstatement of fact not supported by any record, and, therefore, should be disregarded by the Court; that Mr. Benisch's reference to The Waddington Bank stock matter as a case in point is without substance in view of the facts: (1) The stock was auctioned well over a year after its original sale when market conditions had changed. (2) The adverse misinformation inserted in the Court record about the condition of the bank had a bearing on the lack of success of the auction in producing a greater figure;

That deponent's statement in the Tilney affidavit in support regarding the fact that the receivers made the estate appear bankrupt is best supported by their own report to creditors (Exhibit E attached hereto and made a part hereof); that six customer creditors did charge off substantial sums on their federal income taxes on the basis of this report before they realized the true status of the receivership is proof positive that the statement was not reckless or irresponsible;

That the inference was that the deponent was blocking the closing of the receivership and that "with a modicum of cooperation from Mr. Tilney this end could have been reached long ago". The question arises as to what cooperation was Mr. Benisch referring. That the admission that "for the past three years there is no one who wanted this estate brought to a successful conclusion more than the administrators" clearly indicates their ability to recognize that the estate was closed but for one item -- that being their fees and allowances; that prior to the discovery of the "tainted" Harris-Studley transaction deponent had regularly requested a statement of fees and allowances is in the Court record as well as in correspondence and verbally in the presence of witnesses;

35. That paragraph 10 of the Benisch affidavit indicates that deponent's affidavit of April 17, 1972 completely ignores the rule of law that administration expenses have priority over payments to creditors; that deponent believes that this rule is only applicable where administrators have shown diligence, prudence, honesty, integrity and intelligence in the handling of

the assets and settling the liabilities of the estate; that deponent's counsel's memorandum of law clearly indicates that where a fiduciary trust has been defiled in a receivership no priority exists and that in fact no payment of fees and allowances is made;

36. That in the Harris affidavit certain statements were made in certain of the numbered paragraphs and that they require some form of answer;

That in paragraphs 1 through 7 Mr. Harris referred to the

Bellingham affidavit and the general status of the liquidation of the Matinecock stock and further in paragraph 7 stated that deponent "was an admitted converter of funds and securities belonging to customers and members of the public"; that deponent does not admit to this charge;

That in paragraph 14 of the Harris affidavit reference is made to a loan at the Long Island National Bank of Governmental Statistical Corporation secured by a 4% Note of the Alaska State Development Corporation in the amount of $95,000 to secure a loan of $62,000;that I. Alan Harris when receiver had no authority to attempt to liquidate this note or to disturb any other property of Governmental Statistical Corporation, no judgment having been rendered against Governmental Statistical Corporation in favor of the receivers prior to the Harris resignation and that no such authority exists today in regard to the receiver's relationship with the Long Island National Bank in view of all circumstances as outlined in the affidavits of Walter J. Carroll, Esq., associated with the office of Charles R. Carroll, Esq., the attorney for the Long Island National Bank, and of Mr. John Rieger, Vice President of the Long Island National Bank, both dated April 19, 1972;

37. That throughout the receivership there have been slanderous charges made against deponent by the ex-receiver, receiver and counsel that deponent was delaying the closing of the estate and interfering therewith; that these statements are entirely untrue; that it is quite

self-evident that deponent would have been the direct beneficiary of an early closing; that this self-evident fact clearly eliminates the alleged charges of delay and interference on the part of deponent.

Sworn to before me this
10th day of May 1972.

Frederick Tilney
Frederick Tilney

EXHIBIT A

To Affidavit of Frederick Tilney
dated May 10, 1972

Transcript pages 220 through 224 of a Hearing on August 6, 1968 pertinent to the City of Nome, Alaska, are reproduced on Appendix pages 1101 through 1105 following.

(Mr. Harris continues)

The receivers will, or let us assume for the moment have liquidated the estate in full. They are entitled to be discharged and the funds distributed.

In order to distribute those funds you, I believe, should give notice to someone to come in, if they are interested in sharing in the distribution of this fund. We are talking now of the ever-lasting liability perhaps of Tilney & Company, subject to the statue of limitations, but to the extent we hopefully have $400,000 or $500,000, to be entitled to share in this, we, the receivers, will either recognize a claim, because the books clearly reflect the same and the person is in existence and we can't think of any reasonable defense to his sharing in this claim, but let us take the situation, if the City of Nome does not wish to share in the distribution of the $400,000, fine; they can sue Tilney & Company until the statute runs out, but Tilney & Company is not going to have any assets to our knowledge, because we will have distributed the assets to those persons who have seen fit to come in and to prove a claim.

THE COURT: I don't think we have any

broad disagreement because obviously nobody is going to be paid any claim unless they substantiate and support their claim and indeed make a claim.

I don't think you are going to reach out and say, we owe you some money, we are going to give it to you, I don't think that's your function, I don't think it's your duty.

I think what we are talking about really is two points: One is the forever barred provision, and secondly this order to file a claim rather than to proceed by letter to indicate briefly what is happening that we are in the process of liquidation and that we'd like to wind up this matter and do they have any claims, do they want to present them, will they present them?

I think that is what we are talking about.

But certainly I hope you will agree with me that the forever barred provision has absolutely no relevance --

MR. HARRIS: That was unfortunate.

THE COURT: Very unfortunate. I may be asleep at the switch, but sometimes these things do slip by, and it would have created some very definite problems.

I am glad we are not going to talk about

that.

MR. HARRIS: I agree.

MR. BENISCH: With respect to Nome once more, are you suggesting that we ignore our letter -- that we notify creditors by letter, that we let any overtures toward the City of Nome stand in abeyance?

THE COURT: Let me ask you some questions: Do we owe any duty to a so called creditor who knows that we have an estate that is in the process of liquidation and being wound up, and the City of Nome has not asserted any claim here -- they are represented by counsel, they are not inarticulate?

MR. BENISCH: Your Honor, I agree. My answer to your question is now, we owe no duty to force or cajole the City of Nome to file a claim here.

As a practical matter, however, I am perhaps thinking too far ahead or not thinking at all, if during the course of this receivership we are about to wind up and pay out creditors, and at that point in comes the City of Nome with a lawsuit for half a million dollars, it knocks a lot of things into a cocked hat with respect to our plans in this proceeding as far as distribution and as far as handling.

THE COURT: Let me take the reverse side of the coin. What if you smoke out a lawsuit, how is that going to change your situation?

MR. BENISCH: Only the fact that we are aware of it and can act accordingly to oppose it.

THE COURT: How can you act accordingly?

MR. BENISCH. Oppose it.

THE COURT: Does it make any difference as to the terms of opposing it and what effect it will have on final and eventual liquidation?

MR. HARRIS: I am not sure of the legal aspect of the situation, but supposing the City of Nome or any other possible creditor, because the name is reflected on the books, comes in and submits to the jurisdiction of this Court, for the purposes of proving a claim and sharing in the distribution of this estate, that this will obviate the need for a plenary lawsuit. If they insist they are legally entitled to a plenary lawsuit which I don't think at the moment --

THE COURT: I don't know either.

MR. HARRIS: -- it would be another story. The only one we can think of in which this area is

going to arise is the City of Nome.

We have many problems with the customer creditors in exactly how much they are entitled to receive, and when they come forward in an adversary position and we begin the benefit of their research, the position they take, vis-a-vis the position that Mr. Tilney or his counsel will take, and the receivers will submit some law to the court, I think the Court will be in a position to say to these various creditors that for the purposes of this estate, Customer A is entitled to be treated as a creditor for $1,000.

THE COURT: Fine.

Let me sum up our thinking and then our friend here from the SEC can have us fully in view of his sights.

I think it is good practice to send a letter to every one of the creditors or alleged creditors, let them know exactly what is happening, and state it would be very helpful if they would communicate with the receivers or counsel, let them know exactly the nature, the value of the claim forever barred statute.

I think it is also helpful to circularize

* * * *

MUDGE ROSE GUTHRIE & ALEXANDER

June 17, 1971

Re: City of Nome, Alaska
$510,000 Joint Utility System
Revenue Bonds

- - - - - - - - - - - - - - - - - - -

Mr. Fred Tilney
Governmental Statistical Corp.
47 West Nicholai Street
Hicksville, L.I., N.Y.

Dear Fred:

In accordance with our conversation I am enclosing herewith copy of material discussed.

With kind regards, I am,

Very truly yours,

William H. Cannon

WHC/ri
enc.

Exhibit B

1106

BOETTCHER AND COMPANY
828 Seventeenth Street
Denver, Colorado

March 11, 1968

Honorable Mayor and City Council
City of Nome
Nome, Alaska

Gentlemen:

Under the terms and conditions herein until 2:00 p.m. M.S.T., March 19, 1968, and upon the representations made by the City of Nome in the various prospecti and the various other supplementary material heretofore submitted to Boettcher and Company(the "Underwriter"), the Underwriter, acting on its own behalf and not as agent, herewith submits its offer to purchase $510,000 principal amount of the authorized issue of $850,000 City of Nome, Alaska, Joint Utility System Revenue Bonds, dated April 1, 1968(the "Bonds), due serially June 1, 1970 through 1987, at a price of 96% of par value plus accrued interest to the date of delivery. The $510,000 principal amount of the bonds shall mature between June 1, 1970 and June 1, 1983, bear interest at the rate of 6% per annum, payable December 1, 1968 and semi-annually thereafter on June 1 and December 1 in each year until their respective maturity dates.

This offer to purchase $510,000 of the Bonds is made subject to the following conditions:

1. The Bonds shall be sold by the City of Nome at such rate and price so that the rate and prices offered for the Bonds, in excess of $510,000

computed from the date thereof to the ultimate respective maturity dates of the Bonds when added to the rate and price offered herein will not exceed the limit as set by referendum.

2. The Bonds shall be authorized by law to be issued by municipalities in the State of Alaska and the Bond Ordinance shall provide that the Bonds shall be secured by a pledge of the net revenues of the system, as defined in the Ordinance, subject only to the lien of the approximately $650,000 outstand-

ing Electric Revenue Bonds on the net revenues derived from the electric service system of the joint utility system and that there shall be no other bonds issued which are secured by the net revenues of the electric service system, unless such bonds are in pari passu with or junior to the Bonds and the pledge of the net revenues of the joint utility system of the Bonds.

3. The Bond Ordinance shall be in the form required by law with specific provisions as to the establishment and maintenance of reserves, covenants as to rates, parity and redemption provisions, with such changes, amendments and supplements as are required by the provisions of this agreement and such changes and amendments as shall have been agreed to in writing by the Underwriter, the City and the City's Bond Counsel Messrs. Preston, Thorgrimson, Horowitz, Starin & Ellis. The City further agrees that there shall be taken in connection with the issuance of the Bonds all such actions as, in the opinion of its counsel, shall be necessary and appropriate in connection with the transactions then contemplated thereby.

4. The City shall deliver to the Underwriter on or prior to April 15, 1968, an executed final copy of the Official Statement which Official Statement shall not contain any untrue or misleading statement (or omit any statement of material fact necessary to make such Official Statement, and the statements and information therein contained, not misleading). The City hereby authorizes the use of the Official Statement by the Underwriter in effecting sales of the Bonds and further agrees that it will hold the Underwriter harmless against any misrepresentations that might appear therein.

5. The City agrees to provide the Underwriter with such Engineer's Report and Certified Fiscal Audits as shall be set forth in the General Memorandum to the City.

6. The City shall provide the Underwriter with a release from Tilney and Company of any claim against the Underwriter, or in lieu thereof, the City shall agree to hold the Underwriter harmless from any liability arising out of this agreement to purchase the Bonds.

In addition to the terms and conditions contained hereinabove which shall be complied with by the City of Nome prior to April 15, the obligation of the Underwriter to take delivery of the Bonds is subject to the delivery at or prior to the delivery of the Bonds by the City of Nome of the following documents:

1. The unqualified approving legal opinion of Messrs. Preston, Thorgrimson, Horowitz, Starin & Ellis as to the validity of and security for payment of the principal, redemption price, if any and interest on

the Bonds. Their opinion shall contain a recital that under existing laws, the interest on the Bonds is exempt from all present Federal Income Taxes and also that any potential claims that Nordin Construction Company or Tilney & Company might have against the City of Nome shall not be a claim against the amount of pledged net revenues of the joint utility system nor would such claim or judgment, if any, affect the joint utility system in a manner which would prevent the City of Nome from paying the principal of, redemption price, if any, and the interest on the Bonds.

2. A certificate from the City of Nome that at the time of delivery that the proceeds of the entire issue of Bonds, together with other funds of the City available for the joint utility system shall be sufficent to pay the principal of, redemption price, if any, and interest on the outstanding bond anticipation notes of the City of Nome issued with respect to the joint utility system, sufficient to pay the costs of the expansion of the electric service portion of the joint utility systemand the Moonlight Springs Extension, sufficient to pay the cost incurred in connection with the issuance of the Bonds and the sum of $100,000 for deposit in the Construction Account to be used in connection with the construction of the proposed extension of the system.

3. A Signature and No-Litigation Certificate by the appropriate officials of the City of Nome, in a form acceptable to the Underwriter's Counsel.

The underwriter may terminate the agreement by notification to

you (i) if at any time or prior to delivery of the Bonds there shall have

been a declaration of war by the Government of the United States, or (ii) the Government of the United States shall change the method of payment of foreign debts or increase the price per ounce paid for gold.

The fees of Bond Counsel, bond printing expenses, initial trustee's fees, publication expenses, other direct bond expenses, but not including any expenses of the Underwriter, will be paid from the proceeds of the Bonds. Out-of-pocket expenses of the Underwriter shall be borne by it.

The Underwriter agrees to accept delivery and payment for $510,000 principal amount of the Bonds maturing and bearing interest as set forth hereinabove and to pay by certified check therefore the sum of $474,600 which together with a good faith deposit of $15,000 delivered by the Underwriter to be held by Preston, Thorgrimson, Horowitz, Starin & Ellis uncashed and unnegotiated, such amount to be forfeited by the Underwriter as fully liquidated damages with no further claim on it by the City or any other party if the Underwriter fails to complete the purchase under the terms of their agreement, to be applied against the purchase price for the Bonds when delivered, or in the event the City fails to complete this agreement, to be returned to the Underwriter on or before May 15, 1968. Said Bonds shall be delivered to the Underwriter and others at a location selected by the Underwriter, all at the expense of the City not later than May 10, 1968, unless the Underwriter shall approve an extension of such time in writing.

Any notice or other communication to be given to you under this agreement may be given by delivery or mailing the same to the City of Nome and any notice of other communication to be given to the Underwriter

shall be delivered or mailed to Mr. Alfred A. Wiesner, Boettcher and Company, 828 Seventeenth Street, Denver, Colorado 80202.

If the foregoing is in accordance with the City's understanding of the agreement, between the Underwriter and the City, kindly sign and return

to Boettcher and Company one enclosed duplicate hereof, whereby it will constitute a binding agreement between the Underwriter and the City in accordance with its terms.

BOETTCHER AND COMPANY

By Alfred A. Wiesner

Accepted this _____ day of March, 1968, by appropriate action of the City Council as evidenced by the attached.

ATTEST:

City Clerk

Mayor

December 9, 1971

Donald A. Burr, Esq.
Burr, Pease & Kurtz
825 West Eighth Avenue
Anchorage, Alaska 99501

Dear Don:

The Nome matter discussed in the letter to Mr. Bolan, is, of course, familiar to you. The fact that the receivers never required any sort of receipt from the City in exchange for my signing off Tilney & Company's agreement with the City in favor of Boettcher & Company could have prevented the litigation on which you so ably represented us.

With the situation regarding Nordene and U.S.F. & G. having gone in favor of the City, the City would have great difficulty in supporting their original case against us if it were still open.

As you know, I settled that case for the sole purpose of clearing the way for a distribution to my creditors.

Sincerely,

Frederick Tilney

FT/dt

Exhibit C

Recapitalization

The enclosed financial statements of the Company give effect to three significant adjustments in the Company's capital structure effected during the fiscal year and thereafter, namely: (1) the conversion of the Company's $1,000,000 short term indebtedness to The Bank of California, N.A. into a two-year term note maturing October 31, 1972, (2) the refinancing of the Company's 7% convertible debentures due July 1, 1971 and (3) the 6-for-100 reverse split of the Company's authorized and outstanding common stock and participating preferred stock, as authorized by the shareholders at last year's Annual Meeting.

Perhaps the most significant was the conversion of the $1,000,000 Bank of California, N.A. note into term indebtedness maturing October 31, 1972. Converting this obligation into a long term debt materially improved the Company's balance sheet and working capital and freed management of the burden of constantly seeking refinancing of this debt at short intervals. I believe it also demonstrated approval of the plan of action your new management has adopted for the Company and its subsidiary.

The refinancing of the approximately $413,000 in 7% convertible debentures due July 1, 1971 was effected through an exchange of approximately $207,000 of such debentures for new 9% non-convertible debentures due July 1, 1981, the exchange of approximately $71,000 of such convertible debentures for shares of common stock of the Company and the call for redemption in cash of the remaining convertible debentures. The Company arranged for financing the approximately $135,000 to pay the called debentures by increasing the amount of its term note with The Bank of California, N.A. by the amount of such funds required for payment.

The 6-for-100 reverse split of the common stock and participating preferred stock was approved by the shareholders at last year's Annual Meeting. After giving effect to the reverse split there are outstanding 286,924 shares of common stock and 1,146.5 shares of the Company's participating preferred stock.

Management

The following table sets forth the officers and directors of the Company.

NAME	POSITION
Ralph E. Whitmore, Jr.	President and Director
Nancy W. Whitmore	Director
Daniel A. Moore, Jr.	Director
Richard E. Anglemyer	Vice President
Patricia J. Davenport	Secretary

The management of the Company remains the same as last year, with the exception that, subsequent to the end of last year, Mr. Richard E. Anglemyer was elected Vice President of the Company. Mr. Anglemyer is Vice President and Cashier of the Company's subsidiary, Alaska State Bank.

Exhibit D-

ALASKA BANCSHARES, INC. AND SUBSIDIARY

Statement of Changes in Consolidated Capital Accounts

Year ended October 31, 1970
with comparative figures for 1969 and 1968

	Total capital accounts
Year ended October 31, 1968:	
Balance at November 1, 1967	$ 281,843
Less:	
Net loss	388,406
Net adjustments to additional paid-in capital resulting from transactions in shares of subsidiary bank	3,650
Balance at October 31, 1968	$(110,213)
Year ended October 31, 1969:	
Balance at November 1, 1968	(110,213)
Add:	
Net income	50,718
36,700 shares of common stock issued at $3.34	122,301
24,252 shares of common stock subscribed to at $3.34 per share	80,840
Equity in assets received by affiliated bank on issuance of additional shares of stock	1,276
	144,922
Less proportionate share of transfer by affiliate to reserve for loan losses	20,682
Balance at October 31, 1969	$124,240
Year ended October 31, 1970:	
Balance at November 1, 1969	124,240
Add:	
Net income	153,297
Issuance of 24,252 shares of common stock previously subscribed to	-
6,814 shares of common stock exchanged for $70,984 of 7% convertible debentures (note 1)	70,984
Equity in assets received by affiliate bank on issuance of additional shares of stock	111,206
	459,727
Less:	
Proportionate share of transfer by affiliate to reserve for loan losses	5,020
Retirement of fractional shares on reverse stock split (note 1)	474
Balance at October 31, 1970	$454,233

Preferred stock	Common stock	Common stock subscribed	Additional paid-in capital	Retained earnings (deficit)
19,109	10,964	-	262,321	(10,551)
-	-	-	-	388,406
-	-	-	3,650	-
19,109	10,964	-	258,671	(398,957)
19,109	10,964	-	258,671	(398,957)
-	-	-	-	50,718
-	1,835	-	120,466	-
-	-	1,209	79,631	-
19,109	12,799	1,290	460,044	(348,239)
-	-	-	-	20,682
19,109	12,799	1,209	460,044	(368,921)
19,109	12,799	1,209	460,044	(368,921)
-	-	-	-	153,297
-	1,209	(1,209)	-	-
-	340	-	70,644	-
-	-	-	111,206	-
19,109	14,348	-	641,894	(215,624)
-	-	-	-	5,020
-	2	-	472	-
19,109	14,346	-	641,422	(220,644)

ALASKA BANCHSARES, INC. AND SUBSIDIARY

Notes to Financial Statements

October 31, 1970

1. Subsequent transactions:

Subsequent to the balance sheet date the Company effected the following transactions which have been applied retroactively to all periods effected.

a. Reverse split the preferred and common stock on a six for one-hundred basis.

b. Exchanged $207,509 of 7% convertible debentures due July 1, 1971 for new 9% non-convertible debentures due July 1, 1981.

c. Converted $70,984 of the 7% convertible debentures for 6,814 shares of common stock.

d. Called the remaining outstanding 7% convertible debentures in the amount of $134,967. Of this amount $86,899 had been paid at June 10, 1971 with funds obtained by an increase in the secured bank loan. The balance of the called debentures have been set aside for payment on redemption, the funds to be made available through the aforementioned secured bank loan.

2. Principles of consolidation and accounting:

Alaska Bancshares, Inc. (formerly City Commerce Corporation) is the owner of 92,924 shares, constituting 50.5% of the outstanding common stock of Alaska State Bank. The Company ends its fiscal year on October 31, while the subsidiary bank is required to observe a December 31 year end by regulatory authorities. The consolidated financial statements include the accounts of Alaska Bancshares, Inc. and Alaska State Bank and its subsidiary, Alaska State Bank Building Corporation at their respective year ends.

Excess of cost to Alaska Bancshares, Inc. over the net asset value on shares of Alaska State Bank purchased during 1970 in the amount of $107,800 has been charged to goodwill.

All material inter-company accounts and transactions have been eliminated in the accompanying consolidated financial statements.

EXHIBIT E

To Affidavit of Frederick Tilney
dated May 10, 1972

Letter to Creditors of October 31, 1968 and Report of Financial Condition of Receivership as of July 31, 1968 are included on Appendix pages 107 through 116, Volume I.

EXHIBIT F

To Affidavit of Frederick Tilney
dated May 10, 1972

Confidential Report of Condition of Tilney & Company and Frederick Tilney prepared for submission to the Receivers and Judge Edelstein at the Hearing of August 6, 1968 is included in Appendix pages 120 through 126, Volume I, and, therefore, is not again duplicated.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	
v.	:	67 Civ. 4676
TILNEY & COMPANY, FREDERICK TILNEY,	:	
Defendants.	:	

RESPONSE OF THE SECURITIES AND EXCHANGE COMMISSION TO PETITIONS FOR ALLOWANCES

Pursuant to the request of Judge Edelstein, the Securities and Exchange Commission sets forth below its views as to the application for allowances filed by I. Alan Harris, co-receiver; Joseph C. Hogan, receiver; Wagner, Quillinan & Tenant, attorneys for the receivers, and Hertz, Herson & Co., accountants. While it appears possible that through additional liquidation of assets of the above defendants public investor-creditors, who have already received the principal of their claims, may also receive the interest, this response is based upon the assumption that the assets will be insufficient for full payment of such interest after payment of appropriate allowances.[1/] It is also based upon the assumption that the allowances requested are final allowances, even though it is recognized that some additional services will have to be performed in the contemplated liquidation.

1/ By this assumption the Commission is not to be deemed as having receded from its earlier position that all assets should be liquidated necessary to pay interest in full to investor-creditors after payment of reasonable allowances.

I. APPLICABLE STANDARDS

Before discussing the individual applications we believe it useful to summarize the legal principles that are relevant to awards of compensation to equity receivers, their counsel and attorneys. While much of the authority we cite relates to proceedings under Chapter X of the Bankruptcy Act, the principles they enunciate are generally applicable to the case at bar, although Chapter X matters--operating a business, evolving a reorganization plan,etc.--generally involve greater complexities than mere liquidation.

Equity receivers, their counsel and attorneys are officers of the court charged with specific duties and responsibilities for which they are entitled to reasonable compensation. While successful receivership is a factor to be considered in awarding compensation,[2/] lack of success does not necessarily bar compensation. No compensation should be allowed, however, for services which are inept, unnecessary or wasteful.[3/] The court considers each application solely on its own merits whether or not objections are filed or raised.[4/]

In proceedings of this sort the only source from which the court's appointees can be compensated is the receivership estate, i.e., the pool of cash remaining at the end of an orderly liquidation. But neither the creditors, who have not yet been paid interest on their claims, nor the debtor, who will be entitled to what remains of the fund after those entitled to compensation from the estate and creditors have been paid,

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2/ Scribner and Miller v. Conway, 238 F. 2d 905 (C.A. 2, 1956).

3/ In re Solar Mfg. Corp., 215 F. 2d 555 (C.A.3, 1954).

4/ Campbell v. Green, 112 F. 2d 143 (C.A. 5, 1940); In re Detroit International Bridge Co., 111 F.2d 235, 238 (C.A. 6, 1940).

retained the appointees whose bills they will be paying.[5] Hence there is an analogy here to the "oft-repeated warning that compensation

in reorganization is not to be allowed at the same rate as that prevailing with respect to other matters".[6] The statement of the rule which is perhaps most "oft repeated" is that of the Second Circuit in Finn v. Childs Co., supra, 181 F. 2d at 435:

> "We have examined the applications for allowances of each of the parties involved here, with their detailed record of amount of time spent and the kind of work performed. We are not disposed to question the reasonableness of such fees by metropolitan practitioners for services of this kind when performed in the course of ordinary litigation. But in a reorganization proceeding, where the lawyers look for compensation to the debtor's estate which may belong, in equity, largely to others than those who have requested their services, they should have in mind the fact that the total aggregate of fees must bear some reasonableness relation to the estate's value. Under these circumstances they cannot always expect to be compensated at the same rate as in litigation of the usual kind . . . ."

As the Court of Appeals for the Third Circuit expressly stated in a receivership proceeding:

> "Generally the applicable considerations are the time and labor required, but not necessarily actually expended, in the proper performance of the duties imposed by the court upon the receivers. The fair value of such time, labor and skill measured by conservative business standards, the degree of activity, integrity and dispatch with which the work is conducted and the result obtained . . . . And in this process vicarious generosity should receive no countenance."

5/ Finn v. Childs Co., 181 F. 2d 431, 435-36 (C.A. 2, 1950).

6/ Meyers, Appellate Review of Attorney Allowances in Chapter X Reorganizations 53 Columbia L. Rev. 1039, 1060 (1953) attributing the rule to "(t)he necessity of avoiding the allowance of fees that consume too large a portion of the estate . . . ."

United States v. Larchwood Gardens, Inc., 404: F.2d 1108, 1110 (1968).[7] Similarly the Court of Appeals for this Circuit has observed that "only moderate compensation" is appropriate for receivers and their attorneys. In re New York Investors, Inc., 79 F. 2d 182, 185 (1935). The reasons for this rule are sound. The class at the bottom of the ladder of priority, i.e., the ones who must actually pay the fees, are often public investors, for whose protection the proceedings are initiated.[8]

Thus, the burden is upon the applicant to demonstrate the compensability and value of his services. He must show affirmatively that he has made a contribution to the objectives of the proceeding and establish its value.[9] Also the estate of the debtor must be protected from the burden of duplication of services.[10]

Of course, when resources with which to pay them are available, awards should be great enough to encourage competent persons to render the onerous and socially useful labors incident to reorganization proceedings.[11] Here,

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7/ In Reality Associates Securities Corp. v. O'Connor, 295 U.S. 295, 299 (1935), a unanimous Supreme Court speaking thorugh Mr. Justice Cardozo observed: "Extravagant costs of administration in the winding up of estates have been denounced as crying evils."

8/ See Securities and Exchange Commission v. U.S. Realty & Improvement Co., 310 U.S. 434, 448-49 (1940).

9/ See Woods v. City National Bank & Trust Co., 312 U.S. 262, 267-68 (1941). See also the court's review of the historical development in Wolf v. Weinstein, 372 U.S. 633, 639-40 (1963); Ritchie v. Flour Mills of America, 122 F. 2d 986 (C.A. 8, 1941).

10/ In re Porto Rican American Tobacco Co., 117 F. 2d 599 (C.A. 2, 1941); In re International Power Securities Corp., 119 F. Supp. 31 (D. N.J., 1954).

11/ See Delafield, Marsh & Hope v. Silbiger, 228 F. 2d 838, 841 (C.A. 2, 1956): "Better service can be commanded on the prospect of adequate or substantial compensation. . . ."

as elsewhere in the law, a balance must be struck among conflicting considerations. As the Court of Appeals for the Fifth Circuit has said:

> "The public interest which is inherent in bankruptcy matters must be considered in awarding fees. The object is to draw a balance to the end that competent trustees and counsel are obtainable in matters of this kind because of the knowledge that they will be fairly compensated. They must not and cannot expect, however, to be overcompensated, for the court must exercise its discretion for the double purpose of fairly treating the trustee and his counsel while at the same time doing equity to the debtor and creditors." 12/

In drawing the balance in a particular case weight is to be given to the amount of time that the applicant was required to spend and to the results accomplished. 13/

II. THE GENERAL CONTEXT

Tilney & Company ("Tilney") is a registered broker-dealer organized as a partnership. Frederick Tilney ("F. Tilney") is the only general partner and his wife, Dorothy Tilney, is the only limited partner. On September 29, 1967, Tilney was permanently enjoined from further violations of the Commission's bookkeeping and recordkeeping rules (S.D.N.Y., 67 Civ. 3153). Thereafter, on December 18, 1967, Tilney was in the instant case permanently enjoined from further violations of the Commission's net capital requirements. On the later date, both Tilney and F. Tilney consented to the

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12/ Mass. Mutual Life Insurance Co. v. Brock, 405 F. 2d 429, 432-33 (C.A. 5, 1968), certiorari denied, 395 U.S. 906 (1968).

13/ There is a need to guard against the sort of thing at which the Third Circuit aimed in In Re Solar Mfg. Corp., 215 F. 2d 555, 560 (C.A. 3, 1954) when it said: "The more we study the record, the firmer is our conviction that . . . the trustees accumulated a record of thousands of hours of work but without commensurate accomplishments or benefits to the estate. The record convinces us not only that there was much duplication of services, but that a very substantial part of the work must have been small matters and office routine uneconomically spread over long periods of time."

appointment of a receiver to marshal the assets of Tilney and F. Tilney and to pay the creditors of both. The services for which compensation is sought arose in the receivership of the above defendants. Messrs. Hogan and Harris were appointed co-receivers on December 18, 1967, and Mr. Hogan continued as sole receiver from July 16, 1969. Wagner Quillinan & Tenant have been attorneys for the receivers and Hertz, Herson & Co. have been the accountants hired by the receivers.

A. General Status of Receivership[14/]

As noted above, the actions brought against Tilney were based on net capital and recordkeeping violations. In consequence, the first

major task confronting the receivers was the examination and reconstruction of Tilney's records so as to ascertain the nature and amount of assets and the extent of liabilities. This task was complicated by the fact that Tilney's business operations were conducted from three separate offices -- One Wall Street, New York; Hicksville, Long Island; and Anchorage, Alaska. A further complication arose from the fact that Tilney had collected money from numerous customers, but in many instances had failed to deliver securities. Hence there were numerous and clamorous creditors.

Moreover, matters were complicated by the existence of other F. Tilney business entities, the assertion of family claims by F. Tilney, and by F. Tilney's frequently-used business device of collateralizing loans with stock owned by Tilney and of cross-guaranteeing the loans thus collateralized. The collateralized stock had to be traced and the loan agreements disentangled. Finally, it should be noted that much of the Tilney assets consisted of

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14/ The work claimed to have been done is set forth in considerable detail in the application filed with the court; following is a general outline of the context in which the Commission's judgment as to fees is made, it does not purport to be exhaustive.

infrequently-traded bank stock which could only be sold in a deliberate, carefully-timed manner in a relatively limited market.

On the other hand, although there were undoubtedly difficulties involved in liquidating some of the properties involved, it appears to us that the liquidation could have been conducted more promptly and that the delays that have occurred may have added to the expense of the receivership. In addition, the primary responsibility of the receivers--payment of claims of the public investors who had dealt with Tilney --was in fact accomplished with relatively little effort beyond ascertaining the justness of their claims; the Commission had developed some of the necessary information before bringing the action, and F. Tilney himself also provided some help in locating additional investors. Moreover, with specific reference to their request for fees, much of the work performed by the several petitioners involved routine chores, as an examination of their time sheets reveal. For these reasons we believe the petitioners should

be paid at a more modest rate than might otherwise have been considered appropriate.

At the time the receivership was created the estate was understood to aggregate about $995,084, including $719,084 representing the firm's assets and $276,000 of F. Tilney's personal assets. In addition, during the course of the receivership the estate received an additional amount of roughly $370,000 representing favorable judgments and settlements on claims not originally recognized as part of the estate, assets sold for the benefit of

the estate by other companies in which F. Tilney had an interest and a gain realized from a sale and buy-in of certain property in excess of its original valuation. During the course of the receivership the court has ordered payments of about $180,000 to public investor-customers of Tilney and $85,000 to general creditors. And in liquidation of claims against the estate stock has been transferred to banks in an aggregate amount of $668,000.

While a strict mathematical computation based upon the foregoing would render a somewhat higher figure, and while we recognize that the figures are somewhat in dispute, we believe a fair evaluation of assets currently in the estate to be about $419,000, comprised of $150,000 in cash; approximately $40,000 worth of commercial property in Hicksville; $129,000 represented by F. Tilney's residential property and $100,000 in the form of loan collateral (which has been the subject of litigation). In addition to the fees and expenses that will be allowed by this Court, general claims of about $10,000 remain, and unpaid interest at 6% on the principal that has been paid to the public investor-creditors would amount to about $41,000.

B. Specific Areas of Work

1. Familiarization and Contact with Interested Parties

Initially it was necessary for the Tilney records to be examined and the assets and liabilities of the estate to be ascertained. This necessitated conferences and correspondence with F. Tilney, the creditors,

banks and attorneys for interested parties. Proofs of claims and a report on the status of the estate were prepared and sent to creditors.

2. Legal Matters

Although most transactions involving the estate required the opinion or at least the considered judgment of counsel, certain matters, either because in litigation or approaching litigation, may be denominated as specifically legal. Briefly these matters were:

(a) A suit by the receivers against D. Raymond Kenney & Co., a joint venture with Tilney. The suit culminated in a judgment for the receivership. The judgment was settled and netted $85,000 to the estate.

(b) The City of Nome sued Tilney and an associated company on an underwriting obligation for $4,000,000. The suit was settled for $20,000.

(c) The Marine Midland Grace Trust Company of New York sued to set aside an order restraining it from selling Tilney assets held as collateral. This matter was settled.

(d) The Tinker National Bank of Long Island, New York, was a creditor of Tilney in the amount of $100,000. Counsel for the receivers worked out an arrangement whereby the bank exchanged its claim for a mortgage on real property held by Tilney, but which property was not part of the estate.

(e) Governmental Statistic Corporation ("GSC"), an F. Tilney entity, owed Tilney $600,000. An action was brought and a confession of judgment in that amount obtained. The estate has realized about $76,000 in cash and real property worth about $40,000 in partial satisfaction of this judgment.

(f) The Long Island National Bank holds as partial collateral for a loan to Tilney and GSC a $95,000 note. This collateral exceeds the amount of the loan. An unsuccessful and time-consuming attempt has been

made to compel the bank to release the note for early sale.

(g) Claims of F. Tilney's wife and children, based on various stock transactions, bank accounts and promissory notes, have been asserted against the estate. These claims have been attacked at court hearings and by motion and by taking depositions of the claimants.

3. Sale of Assets

Liquidation of assets disposed of has provided the $265,000 which has been distributed to approximately 157 claimants, including 119 public investor-customers. As noted above, this has been sufficient to pay the principal but not the interest on the claims of the investor-creditors.

(a) Stock.

The preponderance of the assets held by Tilney consisted of the stocks of banks and bank holding companies located in Alaska and Long Island, New York. Many of these stock were collateralized and various transactions were necessary to free up the collateral. Most of the stock is infrequently traded and could only be sold in small amounts. Careful attention to market conditions and an assiduous search for buyers were often a prerequisite to sale.

(b) Real Property

The estate's real property has consisted mainly of F. Tilney's residence originally valued at about $150,000 and other property in Alaska and Long Island, New York. Title to certain of the Long Island properties is unclear since some is held by F. Tilney and his wife and some by corporations in which Tilney has an interest.

III. THE APPLICATION OF MR. HARRIS--CO-RECEIVER

Mr. Harris is a member of both the New York and Florida bars and is associated with firms in both states. His primary area of

experience and expertise is in the field of banking law. He brought this experience to bear in negotiations with banks, disentangling loan agreements and tracing collateral. His most valued service to the estate was in the clarifying of the many financial relationships between parties interested in the estate. Such clarity was a prerequisite to the proper administration of the estate.

Mr. Harris resigned on June 16, 1969, as a result of criticism of his sale of a controlling interest held by the estate in Waddington Bank and his acceptance of a position thereafter on the board of directors of that bank. Mr. Harris sold the stock to one Jack H. Studley, a friend, for $50.00 a share, who thereafter requested that Mr. Harris serve on the board of directors. The transaction was subsequently rescinded because of the possible conflict of interest, and ultimately, after substantial advertising, the shares were sold for the same amount to another purchaser.

Mr. Harris' application is based on 885 hours of service. A check was made of Mr. Harris' time records and proof of expenditures. The time records were carefully, indeed meticulously, kept and the expenses borne out. Time expended was broken down into tenths of an hour. This appears to include, however, 40 hours spent preparing the application for allowances, which we believe is not compensable. See, e.g., In re Polycast, 289 F. Supp. 712, 720 (D. Conn., 1968). It also includes 76 hours representing 10% of the recorded time, on the theory that a portion of the time

spent was necessarily unrecorded. We believe that no extra amount of unrecorded time should be considered; while it may be that on occasion work is performed in such short periods of time that it is unrecorded, this is presumably compensated for by short

interruptions respecting other matters in time periods for which compensation is sought. Cf. In re Polycast, 289 F. Supp. 712, 717 (D. Conn., 1968). Of the time claimed, there appears to be approximately 30 hours claimed subsequent to Mr. Harris' resignation. Since some of this time was presumably required because of the resignation, it is doubtful that all of it should be compensated.

Over all, a fee of $28,000 would be appropriate for the legal services of Mr. Harris. As against this, however, there should be offset the cost of the resale of the Waddington stock of approximately $4,000 in advertising and auction expenses and of approximately $3,000 of time of his co-receiver and counsel spent in connection with that resale. Accordingly, we recommend for Mr. Harris a net fee of $21,000. We do not question his expenses of $535.

While we recognize that the recommended fee is at a rate less than Mr. Harris probably receives in private practice, in view of the fact that the investor-creditors may receive less than principal plus interest in full on their claims and in view of the fact that there must have been a certain amount of unnecessary duplication by reason of the fact that during the entire period of his service the estate had two receivers, we believe the foregoing amount is appropriate.

IV. APPLICATION OF MR. HOGAN, RECEIVER

Mr. Hogan is a partner in the law firm of Hogan & Kelleher. In the

initial stages of the receivership Mr. Hogan was co-receiver with Mr. Harris, and subsequent to the latter's resignation Mr. Hogan has been sole receiver and has necessarily assumed full responsibility. Although he has been involved in all receivership matters, his greatest contribution has been in connection with the sale of assets.

Mr. Hogan's application was based on 1,012 hours of service. A check of his time records reveals that the time claimed to have been expended is supported by office records and diaries. Nevertheless, we believe there should be eliminated 40 hours of unrecorded time, for the same reasons that we eliminated unrecorded time of Mr. Harris.

Mr. Hogan has indicated that additional liquidation of the defendants' estate and other services will have to be performed prior to approval of his final accounting. Considering the work performed and to be performed, the fact that the investor-creditors have not received interest, and the duplication necessarily caused by the fact of there being two receivers for a substantial period, an overall fee of $36,000 appears to be appropriate for Mr. Hogan. Mr. Hogan proposes to seek to apply for his disbursements at a subsequent date.

V. APPLICATION OF WAGNER, QUILLINAN & TENANT, COUNSEL TO RECEIVER

This law firm has filed an application for services expended over a period of 1603 hours. A check of counsel's records reveals that the claim for time expended is supported by time sheets, diaries and office records. The bulk of this time, 894 hours, was spent by Mr. Benisch, an able associate of the firm; 540 hours were spent by various other attorneys associated with

the firm; and 159 hours were spent by partners. This law firm is experienced in receivership, bankruptcy and reorganization matters and has ably handled the estate's legal matters. It does appear, however, that a substantial amount of time was spent in intra-firm consultations. While important legal matters necessarily require judgment and careful consideration, it appears that in some instances as many as four or five lawyers conferred on problems where this may have resulted in some unnecessary duplication.

Presumably this law firm will also have additional work to perfom in connection with winding up the receivership. Considering the work performed and to be performed, the fact that the investor-creditors have not received interest, and the fact that much of the time was spent by associates, an overall fee of $46,000 appears to be appropriate for this firm.

Counsel also seeks $3,339.90 for reimbursement of expenses. These are supported by office records and should be paid.

VI. APPLICATION OF HERTZ, HERSON & CO., ACCOUNTANTS

The accountants have filed a petition requesting payment for 2,484 hours of services, of which 680 were spent by partners, 1420 by senior and supervisory accountants, 216 by semi-seniors and 167 by juniors. The accountants' services falls into three broad categories: (1) an extensive review, examination and investigation into the complex and entangled affairs of the debtors; (2) extensive accounting, reporting and tax services to bring the incomplete books and records of the debtors to a current status at the date of the appointment of the receiver; and (3) substantial accounting, reporting and tax services covering the receivers' administration from the date of appointment to January 31, 1972, including accounting work done to effectuate the distribution.

The percentage of the total time claimed to have been spent by partners, supervisory and senior personnel seems unusually high. For this reason we suggest a somewhat lower rate for the time of partners and senior personnel than we might otherwise have recommended. In the light of the fact that public investor-creditors have not been

paid in full with interest, we believe that the following schedule appears to be appropriate:

	Hours	Hourly Rate	Amount
Partner	680	$30	$20,400
Supervisory and Senior	1420	$18	$25,560
Semi-Seniors	216	$15	$ 3,240
Juniors	167	$10	$ 1,670
			$50,870

Any additional time necessary in closing the estate should presumably be at these same rates.

The accountants also claimed disbursements of $674.70, which should be paid.

Dated:

May 10, 1972

Respectfully submitted

/S/ David Ferber
DAVID FERBER, Solicitor

/S/ Richard E. Nathan
RICHARD E. NATHAN, Assistant General Counsel

/S/ Paul Chernis
PAUL CHERNIS, Assistant Regional Administrator

Securities and Exchange Commission
26 Federal Plaza
New York, New York 10007
212-264-1640

Attorneys for Plaintiffs
SECURITIES AND EXCHANGE COMMISSION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

SECURITIES AND EXCHANGE COMMISSION, :
Plaintiff, :

-against- :

TILNEY & COMPANY, :
FREDERICK TILNEY, :
Defendants. :

- -x

AFFIDAVIT

67 Civ. 4676

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROBERT F. MULLIGAN, being duly sworn, deposes and says:

1) I am an attorney-at-law associated with the firm of Wagner, Quillinan & Tennant, attorneys for the Receiver of the assets of the above captioned defendants and am fully familiar with all the facts and circumstances heretofore had herein.

2) This affidavit is submitted in response to the memorandum of the Securities and Exchange Commission dated May 10, 1972, and filed herein, pertaining to the applications for allowances filed by the Receiver, the attorneys for the Receiver and the accountants to the Receiver.

3) The position maintained by the Securities and Exchange Commision in said memorandum is in callous disregard of the facts of this case. The recommendations of the Securities and Exchange Commission are, admittedly, "based

upon the assumption that the assets will be insufficient for full payment

of . . . . interest after payment of appropriate allowances". The truth of the matter is, that sufficient assets are available for the payment of interest and requested administration expenses.

4) According to the accountants to the Receiver, the approximate value of all receivership assets is as follows:

Cash and liquid securities			$125,000
Real Property:			
"Sundown" - appraised value	$152,000		
less mortgage	21,000		
Net		$131,000	
Hicksville property -			
Purchase price		37,000	
(Note: Although reflected here at purchase price, this property has been appraised at a substantially higher figure)			
Total Real Property			168,000
Life Insurance (cash values)			27,000
Receivership share of cash and securities held by Long Island National Bank, as security for Governmental Statistical Corporation loan.			61,000
Estimated equity remaining in Governmental Statistical Corporation, after repayment of aforesaid loan, and subject to judgment			41,000
			$422,000

Using this figure of $422,000, (which, it should be remembered, does not recognize possible substantially higher real estate values) and after deducting estimated interest of $45,000 and requested administration expenses of ~~$358,955~~ $313,955, there would

actually be a balance of assets remaining on hand of approximately ~~$18,045~~ $63,045.

5) The aforementioned memorandum of the Securities and Exchange Commission also ignores the fact that the public interest in this case has been and shall continue to be, fully protected. All creditors have been paid in full and it is anticipated that customer creditors will be paid interest on their claims. The cases cited by the Securities and Exchange Commission, therefore, may be distinguished. It cannot be over emphasized that this is a solvent estate.

6) With particular regard to the recommendations made by the Securities and Exchange Commission in connection with the services rendered by Mr. Hogan, it should be pointed out that reference to "duplication necessarily caused by the fact of there being two receivers for a substantial period" is totally unwarranted. Two co-receivers were appointed at the outset of these proceedings because of the complexity of the affairs of this estate. The Securities and Exchange Commission has shown no duplication of services. It should also be pointed out that the suggested award to the Receiver would result in payment at the hourly rate of approximately $37.00, even excluding 40 hours for "unallocated time", and without taking into consideration additional time that will be required to finally wind-up the affairs of this estate. This is not a reasonable rate of compensation, nor a moderate rate of compensation, but can only be described as an inadequate rate of compensation.

7) With particular regard to the Securities and Exchange Commission's recommendations re Wagner, Quillinan & Tennant's application for allowances:

a) The allowances suggested by the Securities and Exchange Commission are pitifully inadequate. The hourly rate realized under such a proposal would be less than $28.75, far below the break-even point for a metropolitan law firm. Also, this proposed rate would be lowered further by the many additional hours that will be required for the winding-up of this estate.

b) The Securities and Exchange Commission has taken exception, in rather nebulous fashion, to the "intra firm consultations" which took place. As far as can be determined by a review of the time records, approximately 248 hours out of the more than 1600 referred to in the application (not to mention the 6½ days spent in Anchorage, Alaska exclusively on receivership business) were incurred in consultations of this nature. All of these consultations were necessary. It is idle speculation on the part of the Securities and Exchange Commission to assume that these conferences and meetings resulted in "unnecessary duplication".

c) Although Robert G. Benisch was classified as an "associate" attorney during the early part of the receivership proceedings, he has been, since January, 1971, a partner in the firm of Berman, Paley, Goldstein & Berman, 10 East 40th Street, New York, New York. The

rate at which his time should be valued, then, should be, even under the rationale propounded by the Securities and Exchange Commission, considerably higher for the work performed in the latter period.

8) With particular reference to the recommendations of the Securities and Exchange Commission pertaining to the application for allowances

of Hertz, Herson & Company, accountants to the Receiver, it should be noted that the Securities and Exchange Commission has seen fit to recommend "a somewhat lower rate for the time of partners and senior personnel than we might otherwise have recommended" because the percentage of the total time claimed to have been spent by partners, supervisors and senior personnel seemed to them to be unusually high. This purely arbitrary reduction is unfair and should be given no consideration whatsoever. This was no simple audit. The reason for the significant amount of partners' time is that much of same was due to the numerous conferences and court appearances necessitated by these proceedings.

9) It is, therefore, respectfully requested that the Court, for the reasons outlined above, not limit the awards of compensation in this proceeding to the recommendations of the Securities and Exchange Commission, but grant the allowances requested by the Receiver, the attorneys for the Receiver and the accountants to the Receiver.

/S/ Robert F. Mulligan
Robert F. Mulligan

Sworn to before me this
16th day of May, 1972.

Notary Public

SECURITIES AND EXCHANGE COMMISSION

May 19, 1972

Honorable David N. Edelstein
Chief Judge
United States District Court for
the Southern District of New York
U.S. Courthouse
Foley Square
New York, N. Y. 10007

Re: Securities and Exchange Commission v. Tilney & Co.
(S.D. N.Y., 67 Civ. 4676)

Dear Judge Edelstein:

We have presented to the Commission your request that it reconsider its recommendations concerning fee allowances in this case on the assumption that interest at six per cent will be paid to all public investor claimants. Assuming interest shall have been paid, the Commission believes it will be appropriate that the amounts heretofore recommended be increased by ten per cent.

The Commission previously recommended that Mr. Harris receive a fee of $28,000, less $7,000 expenses to the estate upon resale of the Waddington Bank stock, resulting in a net fee of $21,000. It would be appropriate if Mr. Harris were to receive a gross fee of $30,800, less an adjusted amount of $7,300, resulting in a net allowance of $23,500.

In the Commission's view, should interest be paid a fee of $39,600 would be appropriate for Mr. Hogan; and a fee of $50,600 should be paid to Wagner, Quillinan & Tenant.

The Commission believes the foregoing fees would be appropriate as total final allowances for all work performed and to be performed in connection with the estate.

For work already performed by Hertz, Herson & Co., accountants, it is the Commission's view that a fee of $55,957 would be proper, and that should any further work be required, it should be compensated at the rate of $33 per hour for partners, $19.80 per hour for supervisory and senior personnel, $16.50 per hour for semi-seniors and $11.00 per hour for juniors.

The Commission was influenced in its judgment that modest fees are appropriate in this case, notwithstanding full payment shall have been made to

all public investors, because, as the Commission has already advised the Court, there appears to have been duplication of effort between the co-receivers and among counsel, an unduly long delay has occurred in bringing this matter to completion, and much of the time claimed by the applicants appears to have been devoted to routine matters; with respect to the accountants, an unusual amount of time is claimed on behalf of senior as compared to junior personnel.

Respectfully yours,

/S/ David Ferber

David Ferber
Solicitor

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

TILNEY & COMPANY,
FREDERICK TILNEY,

- 67 Civ. 4676 DNE

Defendants.

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ANSWER TO RESPONSE OF S.E.C./
IN SUPPORT OF APPLICATION FOR
ALLOWANCES OF I. ALAN HARRIS

This answer is respectfully submitted to the "views" and recommendation as to the application for allowances of I. Alan Harris, the withdrawn receiver (hereinafter "applicant"), of the Securities and Exchange Commission (hereinafter "Commission") dated May 10, 1972. In Point II of the applicant's main memorandum, required to be submitted prior to the submission of the more detailed observations, views or recommendations of the Commission (which were expressly requested by the Court), the right was reserved to respond to the same.

Under these circumstances, and by reason of the matters hereinafter immediately set forth, the applicant respectfully requests the leave of this Court to submit this answer, pointing out the unwarranted, inaccurate or improper assumptions of fact upon which the Commission itself bases its Response and states its conclusions, its errors of fact, and further pointing out and citing decisions and ruling law much more in point and apposite to the matter at bar.

The applicant has been waiting for the Court's decision (apparently now determined) as to the motion brought on by order to show cause returnable May 4, 1972 relating, among other things, to the matter of all of the third-party affidavits submitted by the defendant. Even after the return date and argument before the Court of said order to show cause, and despite being aware of the Court's decision that no further affidavits were to be submitted, the defendant has submitted a "Further Affidavit" of 21 pages.

Not only does the defendant persist in making references to the affidavits of Messrs. Pack, Bellingham, Reiger, and Carroll, and the other third-party affidavits which were encompassed by the pending order to show cause, he now also introduces some additional material consisting of a letter to him from Messrs. Mudge Rose Gutherie & Alexander, an unaccepted offer of a brokerage firm addressed to the City of Nome, and material allegedly extracted from a corporate annual report, in addition to his usual own self-serving correspondence and reports.

Based upon the advice that all of the third-party affidavits (and similar material) will be stricken and expunged from the record, the applicant is not seeking permission for leave to answer the same or further to respond thereto or to any of the said similar material. The defendant's arguments or alleged statements or conclusions of fact or of law, to the extent relying or bottomed upon the averments or attempted averments of any of these stricken affidavits, must now be recognized as the mere unsupported and unwarranted mouthings of the defendant as to which the Court has had sufficient familiarity and direct

and personal experience over the past four years; and the applicant will rely upon the Court to disregard all of the stricken material, all similar material submitted by the defendant, and all conclusions or inferences attempted to be derived therefrom.

Ability to Pay All Reasonable Allowances Plus Interest in Full/ and The Weight to Be Given to The Commission's Views

At the very outset the Commission fatally undermines the value and worth of its own views and recommendations by stating that

> "...this response is based upon the assumption that the assets will be insufficient for full payment of ... interest (to public investor-creditors) after payment of appropriate allowances."

This assumption is completely and knowingly unwarranted and unsupported by any facts. All interested parties have known, and argued, ad nauseum, that there are more than sufficient assets to pay fair and reasonable administration expenses, plus interest to creditors, and yet leave a substantial equity to the defendants. Thus the 'ability to pay' is a fact which is not open to dispute, and is present and proven in the case at bar; and the structure built by the Commission (flimsy enough as it is in its own right) is left without any foundation whatsoever.

Why the Commission would bottom its entire Response upon such an unwarranted and erroneous assumption is difficult to fathom. Perhaps because without such an assumption (regardless of how implausible), the balance of the Commission's sterotyped response would be patently irrelevant and inappropriate, and would have required further research, refinement and change.

After this completely unsupported assumption and crucially erroneous fact, the Commission's Response then proceeds into a recital of what it terms the "applicable standards" or the relevant "legal principles" for awards to equity receivers. It cites authorities, in a treatise or hornbook fashion, relating to Chapter X proceedings, peppering the margin with citations for its general statements, whether or not any of the facts in the case at bar require the application of the legal principles thus set forth.

Needless to say, as will be amply demonstrated and brought to the Court's attention below, the Commission does not cite the authorities and cases for the legal principles which support the applicant's requested allowance; nor does the Commission even point out that many of the very same authorities and cases cited by it in support of some one statement of general legal principle, also lend and give even greater support to more relevant principles which buttress the applicant's position - particularly in light of the true facts present in the case at bar.

The only analysis which makes sense for this aberrant behavior of the Commission is that, in fact, the Commission is not familiar with this case, it did not make a considered appraisal of the value of the services in question, it automatically feels that it is incumbent upon it to recommend allowances about as low as possible even if it takes a gross distortion of the facts to make a suitable or plausible framework, its opinion is not supported by reason, and it persisted in bottoming its recommendations on unwarranted assumptions and outright misstatements of facts. In other words, it is a fantasy.

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The Response and recommendations of the Commission in this case are in such manifest disregard of right and reason (See Stein v. Henker, 153 F.2d 740,743 (8th Cir. 1946)), that they are not entitled to any weight whatsoever.

The Commission itself cites Campbell v. Green, 112 F.2d 143 (C.A. 5, 1940), and In re Detroit International Bridge Co., 111 F.2d 235 (C.A. 6, 1940), as support for some proposition irrelevant herein. The applicant submits said cases in support of his position that this Court is authorized, nay required, to ignore the Commission's views entirely.

The Campbell v. Green case, supra, was a simple case holding that, at p. 144:

> "The court, either trial or appellate, is itself an expert on the question and may consider its own knowledge and experience concerning reasonable and proper fees and may form an independent judgment either with or without the aid of testimony of witnesses as to value."

In the case of In re Detroit International Bridge Co., supra, after stating the circumstances to be considered in matters of this kind, the extent and nature of the labor, time and trouble involved, the results achieved, the character importance of the matter in hand, the value of the property or amount of money involved, the learning, skill and experience exercised, and last but not least, "the ability to pay", the court discussed the recommendations of the Commission (which were required by statute in that case) and noted at p. 238, that:

> "While such recommendations are entitled to weight, they are not conclusive because, after all, the court must determine for itself the fair value of the services rendered."

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The Commission cites In re Solar Mfg. Corp., 215 2d 555 (C.A. 3, 1954) for the proposition that inept, unnecessary or wasteful services should be uncompensated. The Commission never points out which administration claimant herein is alleged to have performed such services (if any were performed in the case at bar) nor furnish any further details or arguments concerning the same. However, that case may profitably be considered in greater detail as shown below. Furthermore, as will be shown below, the Court will be reminded, in outline fashion, of what the record reveals as to the progress of this receivership.

In discussing the role of the Commission, the court noted at p. 562, that the Commission in that case had a statutory responsibility and had supported its recommendations as convincingly as possible, that the Commission had familiarity with the case as an active participant from the beginning, and that therefore, its reasoned opinion as to what allowances are fair and reasonable is a very useful and proper guide.

Does any of that fit the case at bar? The answer is absolutely not.

The court in the Solar Mfg. Corp. case, supra, cited the case of Matter of Philadelphia & Reading Coal & Iron Co., 61 F. Supp. 120 (E.D. Penn. 1945).

It is significant that in said latter case, at p. 124, the court held:

> "The debtor is quite able to pay the full reasonable expenses of reorganization, even though they add up to a pretty large amount of money ... Ability to pay was one of the items suggested as proper for consideration

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... in Steere v. Baldwin Locomotive Works, 3 Cir., 98 F.2d 889, 891, and by this Court in Re Pine Hill Collieries, D.C., 46 F. Supp. 619." (emphasis supplied).

Is that appropriate for consideration by this Court? Of course! In fact, it would be a gross abuse of discretion for this Court to ignore the proven ability to pay.

In referring to the Commission's statement in the Philadelphia & Reading Coal & Iron Co. case, supra, the court noted, p. 124, that it was

> "... based on what was obviously a painstaking appraisal of the value of the services, ... a full statement supported by reasons ..." (emphasis supplied).

Even so, the court also agreed that no more weight should be given to the statement of the Commission on the subject of allowances than would be given to any other statement by any other party.

However, in the case at bar, not only are the Commission's views not required by statute as in a Chapter X reorganization, these views are the reluctant result of a court direction, they are not the result of a painstaking appraisal of the value of the services, the Commission does not support its recommendations convincingly with reasons, nor is the opinion based upon an accurate assessment of the uncontroverted facts, nor reasoned in any fair interpretation of said word. The Commission even avoids meeting the required and recognized standard of 'fair and reasonable', and recommends something which it deems 'appropriate' -- and at that, based deliberately upon an egregious error in a crucial fact and a guess or conjecture on its part (Commission's Response, p. 11).

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tremendous burden of administrative services and

The Court of Appeals in In re Solar Mfg. Corp., supra, recited an amazing tale involving four rounds of interim allowances, in which the first district judge had previously admonished that

> "...any subsequent fees or allowances made to the trustees must of necessity be small."

Despite said earlier admonition and warning, the allowances had already been doubled by the court below. It was also noted that the general creditors will get little more than 25 percent of their claims, that the present District Judge did not have personal familiarity or knowledge of the services rendered, that the Court of Appeals was very familiar with the facts as a result of prior appeals, and that the Court was convinced that, at p. 560:

> "The more we study the record, the firmer is our conviction that for some thirty months after the sale of the debtor's business the trustees accumulated a record of thousands of hours of work but without commensurate accomplishements or benefits to the estate."

Is any of the foregoing analogous to the case at bar or to the applicant's role therein? Is it useful, pertinent or relevant to the determination of the issue? Why did the Commission herein cite and quote this material?

The debtor-defendant herein is quite able to pay the full reasonable expenses of this proceeding, plus interest in full, and the Commission's views must be rejected as unworthy of any weight whatsoever.

Benefit to The Estate and
Fairness to The Applicant

The Court of Appeals for this Second Circuit stated, as simply as could be, In re Realty Associates Securities Corp., 156 F.2d 480, 482, (2d Cir. 1946):

Is the foregoing supposed to represent some consent

> "... administration which aids in bringing about full payment of all creditors, while leaving the debtor with an equity, is patently beneficial to the estate."

While a court need not deal generously in assessing administrative costs against an insolvent estate, the same court nevertheless held, in Glasser v. Doyle, 223 F.2d 811 (2d Cir., 1955), that even in those circumstances a court must deal justly with its appointee. In that case creditors were only to receive somewhat less than 50 percent of the amounts due. The court stated, p. 812 - 813:

> "In such circumstances a court need not pay a trustee as much as equivalent services might be expected to yield ....."
>
> .....
>
> "The demands of fairness and the demands of economy (in an insolvent reorganization under the Bankruptcy Act) must be accommodated." (emphasis supplied).

The Commission cites Meyers, Appellate Review of Attorney Allowances in Chapter X Reorganization, 53 Col. L. Rev. 1039, 1068 (1953), for support of the high-sounding general proposition that compensation in reorganization might not be allowed at the same rate as in other matters so as to avoid consumption of too large a portion of the estate, etc. As shown, it is apparent that such a rule only applies in an insolvency, where some class of creditors will not be made whole, and is not properly applicable to the case at bar.

What is more surprising is that the Commission, being aware of this excellently presented analysis and law review article, does not cite the same, nor any of the leading cases quoted or referred to therein, for the submission to this Court

of the principle noted therein, p. 1068, that the single most important criterion applied by the appellate courts in reviewing the size of allowances is the 'ability to pay.' In addition, as the author notes therein p. 1071, even in dealing with insolvent estates:

> "But economy can be overdone; the courts should not lose sight of the fact that debtors' estates must pay the price if they are to be administered properly ...."

Furthermore, this same law review article is quite critical, and cogently so, of some of the analysis and reasoning set forth in Finn v. Childs Co., 181 F.2d 431 (C.A. 2, 1950), (also cited by the Commission), particularly for its reliance on and perpetuation of the "budget principle", "single fee", and "no duplication" theories.

This Court is not fairly assisted in determining the application at bar by quoting picturesque language, or citations of subjective words taken out of context from cases arising in the depths of the depression, or from inaccurately attributed quotations of Senate Committee reports during the same period of time which led up to ancient amendments to the Bankruptcy Act. -- (See the Commission's quotations on p. 3 of its Response from the cases of: United States v. Larchwood Gardens, Inc., 404 F.2d 1108, 1100 (1968), "vicarious generosity should receive no countenance"; In re New York Investors Inc., 79 F.2d 182, 185 (1935), "only moderate compensation"; and In Reality Associates Securities Corp. v. O'Connor, 295 U.S. 295, 299 (1935), "Extravagant costs of administration in the winding up of estates have been denounced as crying evils." -- a quotation from a 1932 Senate document, noted as such in a Judge Cardozo opinion in a case involving the compensation of a Referee, and referred to

in an interpretation of the amendments to the Bankruptcy Act.)

The case of Finn v. Childs Co., supra, also cited by the Commission, dealing as it does with the typical insolvent, is inapposite for the general principle of law to be applied in the case at bar concerning the fee application at bar. And even that case dealt primarily with applications from 22 different representatives of different committees of creditors and stockholders, and not the compensation allowed the trustee. As the Court of Appeals there stated, at p. 436:

> "Heed should be paid, too, to the fact that many of the services for which compensation is claimed involved phases of the administration of the estate which the trustee was already handling more than satisfactorily ..."

In the case at bar, there is no question concerning 'ability to pay', and the one who will actually pay the fees requested is the defendant himself, and not the public investors. Furthermore, in the case at bar, the defendant wanted the receivership, it worked out precisely to his advantage, and he himself deliberately has caused, on a conservative basis, an increase of 100 percent -- or a doubling -- in the amount of time, effort, skill and services required to be expended.

What would have been most helpful to this Court, in the light of the relatively unique but true facts subsisting in the case at bar (and consistent with the ethical and professional obligations of all attorneys to present citations of authority to the court even though adverse to the said attorney's own position) would have been for the Commission, with all of its resources and experience in this aspect of similar matters (see In re Solar Mfg. Corp., supra) to have cited the cases of H. H. Sacks, Inc., 108 F.2d 173 (1st Cir. 1939) and In re

Mountain States Power Co., 118 F.2d 405 (3rd Cir. 1941), both cases referred to in the Meyers' article in 53 Col. L. Rev., supra.

In H. H. Sacks, Inc., supra, at p. 174, the court sustained large allowances over debtor's protest where the administration had been rendered more difficult by the debtor's failure to co-operate, holding:

> "... while in view of the size of the estate the amounts recommended by the Master and approved by the Court are larger in the aggregate than would be appropriate in an ordinary case, this is not an ordinary case. Much of the work on which the allowances were based was required because of the conduct of the appellant ... As the Master also found, the trustee was subjected to harrassment and abuse by the debtor and his attorney ...'" (emphasis supplied).

And In re Mountain States Power Co., supra, the court held that in light of the conceded ability to pay the requested allowances, the drastic reduction in compensation allowances was in such disregard of right and reason as to amount to an abuse of the district court's discretion and that the amounts awarded below were unjustly and unreasonably low. See also, Stein v. Henker, 153 F.2d 740, 743 (8th Cir., 1946).

It must be noted that the Commission's Response completely ignores the significant facts which were brought to the Court's attention in applicant's main memorandum, Statement and Facts, pages 13 - 16. Who delayed the liquidation and the termination of this receivership?

The co-receiver of the applicant was persuaded by the defendant to delay further liquidations while he worked out some

grandiose scheme to close out the estate in one fell swoop. The applicant sought repeatedly to regain the momentum by liquidation of the remaining assets and securities, such as the shares of Long Island Commercial Review, Inc., and other shares and assets whether held by pledgee banks or not. Many other steps were recommended, both before withdrawal of the applicant and after that date, so as to liquidate and terminate this receivership, but to no substantial avail. Despite the Court's direction (transcript of hearing of June 26, 1969, quoted on p. 13 of applicant's main memorandum) that liquidation should proceed quickly and efficiently, it did not.

The defendant continued to be successful in his stalling, delaying and obstructive tactics, to the great personal detriment of this applicant. Therefore, any allusions by the Commission to the 'delays' in this proceeding, if intended to be support for any reduction in the requested allowance, will not be permitted.

It is shocking to realize (upon reviewing all that had been previously stated and presented in writing in this proceeding, including the Statement and Facts of applicant's main memorandum) that the Commission can so ignore or blind itself to the uncontroverted facts and circumstances and submit its Response as written.

The demands of fairness (Glasser v. Doyle, supra) requires that the Commission's views must be rejected as unsupported by right or reason, and the applicant's request for allowance be granted in full.

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Value of Applicant's Services

As shown above, to imply that the applicant was responsible for any delay in liquidation and that the same could have been conducted more promptly, and that the delays that have occurred may have added to the expense of the receivership to be 'charged' against his services, is a grossly false accusation or implication. In attempting to set forth, in dollars, the estimated value of the estate at its origination, and in attempting to set forth, again in dollars, a simple statement of the amount of assets liquidated (the overwhelming majority thereof by the applicant), the Commission again reveals its own misunderstanding of what has transpired and its own lack of familiarity with or ignorance of the activities of the receivership up to the date of withdrawal of the applicant as a co-receiver. Again even in estimating the value of the assets on hand, the Commission has assumed completely unwarranted amounts, lower than any fair or reasonable value.

Nevertheless, it still ends up with an aggregate amount of a wholly-solvent estate which would permit the payment of all requested administration expenses, plus interest in full to creditors, and still leave an equity for the defendant. Ergo, why the assumption of insufficient assets to pay interest in full?

In its recital of facts under the heading "Sale of Assets", the Commission erroneously omits mentioning that more than $1,000,000 of assets were liquidated by sale prior to the

date of applicant's withdrawal, and that proceeds were used to pay off and satisfy various pledgee bank creditors, etc. It deliberately misstates or mischaracterizes the extent of the liquidation and concludes with another misstatement, or half-truth, that the liquidation (to date) is insufficient to pay interest on the claims.

There is more than enough cash on hand to pay interest in full. The issue is the determination of the administration expenses, so as to guide the receiver in the extent of liquidation of the remaining assets. In fact, the estate outbid third-parties who would have paid some $35,000 to $40,000 additional cash into the fund in connection with an execution sale of land over eight months ago, and the land is still on hand (exactly what the defendant wanted all along).

If the Commission is so ignorant of the value of the property or amount of money involved in this estate, it would be folly to expect its recommendations to have any true merit.

In its characterization and listing of "Legal Matters", and in its opening sentence before said listing, the Commission again ignores or overlooks the uncontroverted facts to the detriment of the position of the applicant. The suit against D. Raymond Kenny & Co., and the defense, negotiations and settlement of the suit by the City of Nome, involved the professional and legal knowledge, ability, experience and skill of the applicant, working with the attorneys of record for the receivers. The suit by The Marine Midland Grace Trust Company was settled by the applicant before any attorneys were retained to assist the receivers in the administration (Applicant's Report and

Petition, p. 6; main memorandum, p. 5). The "unsuccessful and time-consuming attempt ... to compel the (Long Island National) Bank to release the ($95,000) note for early sale" (should be "redemption") was started and continued against the advice of applicant as, in applicant's professional opinion, an unnecessary and doubtful procedure. The drawn-out proposals, counter-proposals and required analysis (before the ultimate resolution of the claims of the Tinker National Bank of Long Island) originally and primarily involved the professional and legal knowledge, ability, experience and skill of the applicant.

As was noted in the case of Glasser v. Doyle, supra, the Court of Appeals for the Second Circuit, had occasion to rule upon the services as a trustee of an experienced lawyer, noting on p. 813:

> "In this case ... appellant Glasser devoted many more hours to the business of the reorganization than did his co-trustee. However, the co-trustee was an experienced lawyer. Although the trustees had counsel, he brought the advantage of his professional knowledge and skill to decisions, recommendations and negotiations involved in the administration of the reorganization. ... Both trustees and their attorney devoted themselves to this problem. The district judge was in a position to determine, and we are not, how important the professional knowledge and judgment of the lawyer-trustee were in accomplishing a settlement ... Many other matters arise in the normal course of a reorganization where the professional ability and experience of a lawyer serving as trustee are of great value not subject to precise calculation."

This was precisely the situation in the case at bar during most of the time that the applicant was in office.

Also see In re Long Island Properties, Inc., 150 F.2d 313 (2d Cir. 1945), in which the Court of Appeals, at p. 314 stated:

> "The district judge has been in charge of the reorganization proceedings from the start, was familiar with the character of the ... services and has expressed the view that the success of the reorganization is due to the industry and wisdom of the trustee and his attorneys."

In its discussion of the application for allowances of the applicant, the Commission (based upon some hasty but erroneous reading of the applicant's Report and Petition For Allowances) concluded that the applicant's "primary area of experience and expertise is in the field of banking law," ignoring the actual education, experience and expertise in finance, taxes, insolvencies, and all of the uncontroverted facts, details and statements set forth in the said verified Report and Petition. The Commission (in its august wisdom) sets forth what it thinks applicant's "most valued service to the estate was". Ignoring the express contents of the transcript of the record of the hearing of June 26, 1969 in which the Court itself stated that the applicant was not being asked, forced nor ordered to resign, and all of the other testimony and statements made at that hearing (see applicant's main memorandum, p. 11 - 14) the Commission deliberately misstates that the applicant "resigned ... as a result of criticism of his sale ..."

The Commission admits that it made a check of applicant's office time records as against the application, and finds that the records were meticulously kept and checked out. Then, overlooking the fact that what was submitted to the Court was a "Report and Petition for Allowance", and not merely an appli-

cation for allowances, it submits that the 40 hours spent preparing the said voluminous Report should not be compensated. The only case of authority cited is In re Polycast, 289 F. Supp. 712, 720 (D. Conn., 1968), in which that District Judge, also without any other citation of authority whatsoever, sustained the same Commission's objections to the "time charges for preparing the trustee's fee application" in that case.

It is respectfully submitted that all of the time reasonably spent by a court appointee in the performance of his duties -- including the time spent (if required) in preparing reports, and even applications for fees if so required by the appointing court or ruling law -- must be compensated in one manner or another. Either one must be allowed to count the recorded hours expended in that necessary chore, or the rate or allowance awarded for the other time spent must be sufficient to compensate the fiduciary for all of the time required to be spent in collecting his just fee.

Should defendant be allowed unreasonably to object to and to resist the award of reasonable fees, compelling a fiduciary to expend dozens of hours additional to the work on the estate, without any requirement to compensate the fiduciary (directly or indirectly) for this time? In the same manner, the rate awarded to a fiduciary must compensate him for the necessary overhead required -- unless the estate bears such expenses directly, which was also not present here.

It is also significant and apposite to the case at bar, that the court in the Philadelphia & Reading Coal & Iron Co. case, supra, also noted that among the considerations properly

taken into account were the increased cost of doing business for lawyers, increased tax burdens, tax reductions which the debtor may obtain for such expenses, and that the work was being performed by lawyers whose services ordinarily command higher compensation.

The Commission objects to the inclusion of 76 hours of unrecorded time, or 10 percent of the recorded time (exclusive of the time required to prepare applicant's Report), not responding to but simply ignoring the statements and justification set forth by applicant. It decided that what applicant solely intended to cover was the aggregate of "short periods of (unrecorded) time". The fact is that on page 31 of the Schedule, in claiming said 76 hours, it was expressly stated that what was claimed was the aggregate of all overlooked and unrecorded time, specifically including the

> "extensive but unrecorded hours (not only the short periods) ... spent during evenings and on weekends reading and studying the voluminous schedules, letters and status reports prepared and sent by (the defendant himself) to the Receivers..."

The applicant was duty-bound to review and study the same, and is entitled to be compensated therefor. Presumably the defendant wanted these writings to be read, and acted upon, and now he must be compelled to pay for the time involved.

As noted above, the Commission admits that it made a check of applicant's office time records as against the application, and finds that the records were meticulously kept and checked out. Therefore, it should have noted that there was no record of this substantial, but unrecorded, evening and week-end

time spent in reading, reviewing, studying and analyzing the said voluminous financial and status reports, schedules, letters, etc.

The Court of Appeals for the Second Circuit has held, In re Nazareth Fair Grounds & Farmers Market, Inc., 374 F.2d 595, 597 - 598 (2d Cir. 1967):

> "As we pointed out in Re Hudson & Manhattan RRwy., 339 F.2d 114 (2 Cir. 1964), an attorney acting by court appointment and expecting to be paid from the estate is under a duty to keep accurate daily records so far as possible. We realize that this is not always an easy matter for single practitioners or those operating relatively small law offices. Moreover, as appears from all of the applications before us, a busy office is almost never able to keep track of a multitude of small matters such as telephone calls and the sending and receipt of letters. We did not mean to imply by anything we said in Hudson & Manhattan RRwy. that the failure to keep complete records for all of the work an attorney does should result in a total disallowance of any claim for services; we merely meant that the failure to keep current and accurate records from day to day is a factor to be considered in evaluating the services and in accepting estimates which the attorney makes at some later date...."

The Commission also erroneously calculates that 30 hours of applicant's listed time was expended subsequent to applicant's withdrawal (or even, resignation) and concludes on its own "that some of this time was presumably required because of the resignation (and) it is doubtful that all of it should be compensated." The Commission ignores the fact that all items of time were"meticulously" listed and recorded, and that there is no warrant for the Commission's own indefiniteness. It further ignores and avoids the very basic and elementary concept of benefit to the estate.

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The record speaks for itself -- and the record notes that the withdrawal was intended by the Court and the applicant to aid the progress of the estate, which items were spent on what matters, what assistance was given to the co-receiver at his request subsequent to the withdrawal, and in brief that some 24 hours (not 30) was probably only one-half of the actual time expended to the benefit of the estate since withdrawal.

The Commission pays lip service to the doctrine of 'ability to pay' and to the encouragement of competent persons to accept the onerous and socially useful labors incident to court appointments of this type, citing Delafield, March & Hope v. Silbiger, 228 F.2d 838, 841 (C.A. 2, 1956), and Mass. Mutual Life Insurance Co. v. Brock, 405 F.2d 429, 432-33 (C.A. 5, 1968), cert. den. 395 U.S. 906 (1968), but itself concludes with an unjustly and unreasonably low recommendation.

As is patently clear from the foregoing painstaking analysis and dissection of the Commission's Response, it stems from both an inaccurate factual basis and from the application of improper legal standards. (See Mass.Mutual Life Insurance Co. v. Brock, supra). Not so incidentally, in said latter case, the trustee, a non-lawyer, and without bearing the burden of any overhead as the same was paid out of the estate, was given a rate of $25 per hour which resulted in an allowance to him of slightly less than $50,000 for one year of work, while his attorney (and not in a high-cost state as New York) was given $50 per hour.

The Court's attention is again respectfully directed to the applicant's Report and Petition, which describes the

tremendous burden of administrative services and overhead [illegible] involved and required of the applicant in this case.

Ultimately, and without much further comment, the Commission herein seems to have used an hourly rate of $35 on an improperly reduced number of hours and comes up with a figure of $28,000 as an "appropriate" fee -- and then, adding insult to injury, and with what can only be characterized as an Alice-in-Wonderland conclusion(and without the benefit of any reasoning or theory therefor), the Commission opines that there should be offset the advertising and auction expenses incurred in the resale of the Waddington Bank stock and some $3000 (a number grossly estimated and exaggerated by the defendant) of time of the co-receiver and his counsel allegedly expended in that matter.

Everyone had been euchered by the defendant into believing that the original sale should be undone, and that there had been a vital failure to obtain an appraisal and to advertise, etc. The shares of stock having been returned to the estate for the same amount originally paid to the estate (and after the estate had had the proceeds for one year and had earned interest thereon), and the defendant and the Commission insisting upon advertising, etc., by what theory or reasoning should these expenses be offset against applicant's allowance. The estate was not burdened by double advertising, auction expenses, etc., nor even by any double expenses of the co-receiver and counsel. The Commission is merely parroting some unsupported and specious arguments of the defendant, the trickster himself.

Is the foregoing supposed to represent some concept of punishment or surcharge, even though this Court has held that there are no facts for any finding of impropriety? (See transcript of hearing of June 26, 1969, p. 36 et seq., quoted on p. 11-14 of applicant's main memorandum). The transaction involving the Waddington Bank stock was not 'rescinded' because of any possible conflict of interest (see transcript of hearing of July 16, 1969, p. 46-48, quoted on p. 8-9 of applicant's main memorandum). A doubt had been raised by the defendant himself, for his own nefarious reasons, as to whether the original price was fair; and, as noted, he had tricked the Court and the Commission into playing his game.

In the Nazareth Fair Grounds case, supra, in which the attorney for the debtor apparently acted as attorney for clients in the purchase of stock of the debtor -- claimed to be a direct violation of a statute, Sec. 249 of the Bankruptcy Act, but without any beneficial interest for the attorney or commissions, etc., -- the Second Circuit held that compensation would not be denied, clearly distinguishing the case of Surface Transit, Inc. v. Saxe, Bacon & O'Shea, 266 F.2d 862 (2d Cir. 1959) and other cases, stating at p. 600:

> "We find no improper conflict of interest. Robbins acquired no beneficial interest for himself and received no commissions or finder's fees."

Why does the Commission believe that the $28,000, less the offset of $7,000, is "appropriate" (not "fair and reasonable", but "appropriate")? It supplies no reasons or explantion. It can only be because of the Commission's own unwarranted and

deliberately inaccurate assumptions and the unsupported conjecture that the "investor-creditors may receive less than principal plus interest ... and ... there must have been a certain amount of unnecessary duplication...."

Why the guesswork? What duplication is it referring to? The general proposition of not paying twice for the same services is, of course, unassailable. However, the facts in the cases cited by the Commission, In re Porto Rican American Tobacco Co., 117 F.2d 599 (C.A. 2, 1941), and in re International Power Securities Corp., 119 F. Supp. 31 (D.N.J., 1954), are readily distinguishable from the facts of the case at bar, involving as they did, respectively, (a) a claim for services allegedly rendered in opposition to a plan by an unauthorized attorney for the debtor duplicating the efforts of the authorized stockholders' committees which also opposed the plan, and (b) a duplication of work and services claimed by executive officers of an indenture trustee also performed by members of two authorized active committees.

In the light of the known and correct size of the estate, the amount of assets liquidated, receipts and payments by the applicant, its present known ability to pay, the extremely complicated status of this estate at its origination, the knowledge, experience, skill, ability and expertise of the applicant brought to bear in administering the estate, the amount of time and effort required to be spent by the applicant, the results achieved and the benefits to the estate and the defendant, the overhead costs incurred, the long time which the applicant has had to wait for compensation, the earnings by the

estate in the meantime which are inuring to the benefit of the defendant himself, the delays, conduct, aggravation, harassment and obstructive tactics of the defendant himself, and all the other criteria properly to be considered in the determination of this matter, the amount requested by the applicant of only $57,500 for almost 900 hours of time within the first 18 months of this proceeding (and far in excess of 960 by this time) is overly conservative and should be allowed.

As was stated by the Court of Appeals in this Second Circuit, in overruling the court below, in the Nazareth Fair Grounds case, supra, p. 598:

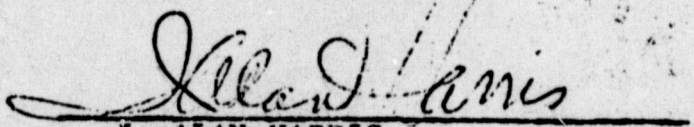
> ".... In view of the nature and quality of (the applicant's) services and the long time which he has had to wait for compensation, we regret that the size of the estate precludes a more generous allowance."

Conclusion

The compensation of I. Alan Harris and reimbursement of expenses should be fixed and allowed in the amounts requested, $57,500 and $534.66, respectively.

Dated: June 2, 1972

Respectfully submitted,



I. ALAN HARRIS
Withdrawn Receiver
292 Madison Avenue
New York, N. Y. 10017
(212) 889-3633

67 Civ. 4676 DNE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

TILNEY & COMPANY
FREDERICK TILNEY,

Defendants.

ANSWER TO RESPONSE OF S.E.C./
IN SUPPORT OF APPLICATION FOR
ALLOWANCE OF I. ALAN HARRIS

I. ALAN HARRIS
WITHDRAWN RECEIVER
~~LIVINGSTON, LIVINGSTON & HARRIS~~
COUNSELORS AT LAW
292 Madison ~~61 CHAMBERS STREET~~ Ave
NEW YORK, N. Y. ~~10007~~ 10017

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

SECURITIES AND EXCHANGE COMMISSION, :
Plaintiff, :
-against- :
TILNEY & COMPANY, :
FREDERICK TILNEY, :
Defendants. :

- -x

67 Civ. 4676
DNE

ORDER TO
SHOW CAUSE

At New York, New York in said District on the day of ,1972.

Upon the annexed affidavit of Terence F. Gilheany, sworn to June 20, 1972, let the Securities and Exchange Commission, plaintiff herein, and Joseph C. Hogan, Esq., the receiver herein, show cause before this Court, at Room 618 of the United States Courthouse, Foley Square, New York, New York, on June , 1972, at M., why an order should not be made directing the said receiver forthwith to disburse to Donald A. Burr, Esq., attorney for Frederick Tilney as defendant in a criminal action presently pending in the United States District Court for the District of Alaska entitled United States of America v. Frederick Tilney, No. A-47-70 CR, the sum of $25,000 from the funds of the receivership estate presently in the hands of the said receiver, for use solely in connection with the defense of the said criminal action by Frederick Tilney; and it is further

ORDERED, that personal service of copies of this order and annexed affidavit of Terence F. Gilheany on plaintiff Securities and Exchange Commission (Franklin D. Ormsten, Esq.), Wagner, Quillinan & Tennant, Esqs., attorneys

for the said receiver, I. Alan Harris, Esq., withdrawn receiver, and Saxe, Bacon & Bolan, Esqs., attorneys for certain creditors, at or before M. on June , 1972, be deemed due and sufficient service.

DAVID N. EDELSTEIN, Ch. J.
U.S.D.C., S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	67 Civ. 4676 DNE
-against-	
TILNEY & COMPANY, FREDERICK TILNEY, Defendants.	AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

TERENCE F. GILHEANY, being duly sworn, says:

(1) I am a member of the Bar of the State of New York and of this Court, and am associated with Cadwalader, Wickersham & Taft, attorneys for defendants in this action. I am fully familiar with all prior proceedings had herein. I make this affidavit in support of an application on behalf of defendant Frederick Tilney for an order directing the receiver to disburse certain funds to Mr. Tilney's attorney in Anchorage, Alaska, to enable Mr. Tilney adequately to defend himself in a criminal action pending against him in the United States District Court for the District of Alaska.

(2) In May 1970, a Federal Grand Jury in Anchorage, Alaska, indicted Frederick Tilney, the individual defendant herein, on thirty counts of fraud in the sale of securities (15 U.S.C. Section 77q(a) and mail fraud (18 U.S.C. Section 1341). The case is entitled United States of America v. Frederick Tilney and bears the index number A-47-70 CR.

Mr. Tilney has pleaded "Not Guilty" to all counts of the indictment.

Several continuances have been granted by the Trial Judge, United States District Judge James A. von der Heydt. The trial is now set to commence on July 5, 1972, less than three weeks from now.

(3) On June 19, 1972, at 1:45 P.M. New York time (8:45 A.M. Anchorage time), I had a telephone conversation with Donald A. Burr, Esq., Mr. Tilney's defense counsel in the Alaska criminal case. Mr. Burr is a member of the Alaska Bar, senior partner in the Anchorage firm of Burr, Pease & Kurtz, and is a former Attorney-General of the State of Alaska. Mr. Burr stated that on Friday, June 16, 1972, he had a conference regarding U.S.A. v. Tilney with Judge von der Heydt and G. Kent Edwards, Esq., United States Attorney for the District of Alaska. Judge von der Heydt stated that the Tilney case was the oldest on the criminal calendar in the District and that he was most anxious to proceed with the trial on July 5. Mr. Edwards stated that the Government has already subpoenaed all of its witnesses (apparently some thirty in number) from all over the United States, and was also anxious to proceed with the trial.

(4) By affidavit sworn to on June 8, 1972, copy of which is annexed as Exhibit A, Mr. Tilney had advised the Court in Alaska, in essence, that he has no funds with which to continue the defense of the criminal action. At the conference on June 16, Judge von der Heydt suggested that this application be made. During my telephone conversation with Mr. Burr on June 19, Mr. Burr estimated that Mr. Tilney would require a minumum of $25,000 to go forward with the defense of this action. Mr. Burr indicated that the trial will take

approximately two weeks, and that the funds are necessary for Mr. Tilney's own travel and living expenses, for the travel mileage and living

expenses of witnesses necessary to the defense, other necessary costs and disbursements, counsel fees, etc.

(5) We respectfully submit that there can be no valid objection to this application. The receiver himself, through his counsel, has repeatedly and recently asserted his view that the receivership estate is solvent, and that, even if the Court were to allow the requested administration fees and allowances in full and even if certain real estate held by the receivership were to be valued at far below its actual worth, there would still be a balance of assets of approximately $63,000 remaining to be returned to Mr. Tilney after termination of the receivership. (Affidavit of Robert F. Mulligan, Esq., sworn to May 16, 1972, Paragraphs (4) and (5), pp. 2-3.) When consideration is given to the further facts that the Securities and Exchange Commission has recommended administration fees and allowances of only slightly more than half of the total requested and that certain receivership assets--most notably real estate--have been substantially undervalued by the receiver in arriving at the $63,000 equity remainder figure, it becomes abundantly clear that by this application Mr. Tilney is requesting an advance of funds which are in fact his own. On the other hand, without the advance of funds requested by this application, Mr. Tilney's ability--and, we submit, his constitutional right--to defend himself against serious Federal criminal charges will be seriously impaired.

(6) We would point out once again that we are

not asking that the requested funds be turned over to Mr. Tilney, but

that they be disbursed to Mr. Tilney's counsel in the Alaska criminal case, to be expended by Mr. Burr only when and as absolutely necessary to the defense of that action. Mr. Burr would then be in a position to render a strict accounting to this Court of the expenditure of the funds so advanced.

(7) No prior request for the relief sought herein has been made. This application is being brought on by order to show cause rather than by the usual notice of motion or application because Mr. Tilney's criminal trial is scheduled to begin in less than three weeks, and the funds hereby requested are needed immediately for the preparation of the defense. For the same reasons, we would ask the Court to fix the return date of the application at as early a date as possible.

For the foregoing reasons, we respectfully ask that this application be granted and that the receiver be directed to advance the sum of $25,000 to Mr. Tilney's defense counsel in the Alaskan criminal action. for use solely in connection with the defense of that action.

Terence F. Gilheany
Terence F. Gilheany

Sworn to before me this
20th day of June, 1972.

Notary Public

Appellant's note: Application for funds for defense in United States of America v. Frederick Tilney, A-4770, United States District Court in the District of Alaska, was dated June 8, 1972. A copy is filed in the basic docket as exhibit to document #146.

This order is unsigned. The affidavit in support thereof affords no basis for granting this ex parte order. The defendant has failed to make a showing why this extraordinary relief should be granted. See Rule 11, General Rules of the Southern District of New York. Further a reading of the affidavit clearly indicates defendant could have given timely notice. See Rule 9(c)(4), General Rules of the Southern District of New York.

MICROFILM
JUN 22 1972

Dated:
June 21, 1972

David N. Edelstein
Ch.J., U.S.D.C., S.D.N.Y.

S. D. OF N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

TILNEY & COMPANY, FREDERICK TILNEY,

Defendants.

67 Civ. 4676 DNE

ORDER TO SHOW CAUSE and SUPPORTING AFFIDAVIT

CADWALADER, WICKERSHAM & TAFT
One Wall Street
New York, N. Y. 10005
(212) 425-3000
Attorneys for Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, - against - TILNEY & COMPANY, FREDERICK TILNEY, Defendants.	67 Civ. 4676 DNE NOTICE OF MOTION

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of Frederick Tilney, sworn to June 28, 1972, defendants, by their undersigned attorneys, will move this Court, before the Honorable David N. Edelstein, Chief Judge, on the day of , 1972, at o'clock in the noon of that day, or as soon thereafter as counsel can be heard, in Room 618, United States Courthouse, Foley Square, New York, New York, for an order pursuant to 28 U.S.C. Section 1654, Rule 11, F. R. Civ. P., and Rule 4(b) of the General Rules of this Court, granting defendants leave (a) to have Frederick Tilney represent himself as individual defendant, and the partnership defendant, pro se, in connection with a certain claim for surcharge asserted herein in an affidavit sworn to by Frederick Tilney on April 17, 1972 and entitled "Supplemental Affidavit in Opposition to Application for Fees and in Support of Application for Surcharge", and (b) to file the aforementioned "Supplemental Affidavit" (heretofore lodged with the Court but not filed) and to submit addition-

al evidence in support of the said surcharge claim.

Dated: New York, New York
June 29, 1972

CADWALADER, WICKERSHAM & TAFT

By Terence F. Gilheany

Attorneys for Defendants
Office and P. O. Address:
One Wall Street
New York, New York 10005
Telephone: 425-3000

TO: FRANKLIN D. ORMSTEN, ESQ.
Attorney for Plaintiff
Securities and Exchange Commission
26 Federal Plaza (11th Floor)
New York, New York 10007

I. ALAN HARRIS, ESQ.
Withdrawn Receiver
Livingston, Livingston & Harris
292 Madison Avenue
New York, New York 10017

ROBERT F. MULLIGAN, ESQ.
Wagner, Quillinan & Tenqant
Attorneys for Receiver
350 Fifth Avenue
New York, New York 10001

THOMAS A. BOLAN, ESQ.
Saxe, Bacon & Bolan
Attorneys for Certain Creditors
39 East 68th Street
New York, New York 10021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -against- TILNEY & COMPANY, FREDERICK TILNEY, Defendants.	67 Civ. 4676 DNE AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NASSAU)

FREDERICK TILNEY, being duly sworn, says:

(1) I am the individual defendant in this case and the sole general partner of the partnership defendant herein. I make this affidavit in support of the instant application (a) for leave to represent myself as the individual defendant herein, and to represent the partnership defendant herein, pro se, in connection with the surcharge claim made in my affidavit sworn to April 17, 1972 and entitled "Supplemental Affidavit in Opposition to Application for Fees and in Support of Application for Surcharge", and (b) for leave to file the aforementioned "Supplemental Affidavit" and to submit additional evidence in support of the surcharge claim. I make this application, and the accompanying memorandum of law is submitted herewith in support of this application, pursuant to the Court's statements in this regard at the hearing held herein on April 19, 1972 (see transcript, pp. 38-40).

(2) The differences between myself and my

counsel with respect to the surcharge claim are known to this Court. See affidavit of Terence F. Gilheany sworn to March 16, 1972 and affidavit of Frederick Tilney sworn to April 4, 1972. These differences,

among other things, led to an application by defendants for substitution of other attorneys in place of Cadwalader, Wickersham & Taft as attorneys of record for defendants. This application was denied. See endorsement filed herein on April 18, 1972. However, the denial of substitution cannot--and, indeed, has not--resolved the differences in question. Accordingly, I find it necessary to request leave to act pro se in the prosecution of the surcharge claim, and I respectfully but most urgently submit that I should not be deprived of the opportunity to have the surcharge claim litigated on the merits simply because I have not been permitted to effect a substitution of counsel. The memorandum of law submitted herewith clearly indicates that this Court has discretion to allow me to act pro se in these circumstances; accordingly, I respectfully request that my application in this regard be granted.

(3) My "Supplemental Affidavit" asserting the surcharge claim was submitted to the Court on April 17, 1972. I understand that it has not yet been accepted for filing, and therefore I am advised by my counsel that it is presently considered as having been "lodged" with the Court, but not filed. At the hearing held herein on April 19, 1972, the Court indicated that the reason the "Supplemental Affidavit" would not be accepted was that it was not submitted to the Court through my counsel. However, if I am allowed at this time to act pro se in connection with the surcharge

application, it follows that I should be allowed to submit papers pro se and that, accordingly, the "Supplemental Affidavit" should be accepted

for filing and for consideration on its merits. I respectfully urge that the Court so order.

(4) Should this application be granted, I would respectfully request the opportunity to submit further papers in support of the surcharge claim and to have a hearing on the claim. Accordingly, the form of order submitted herewith provides for such additional papers and hearing, as well as for the filing of opposition papers.

(5) The surcharge claim which I seek to assert is a matter easily distinguishable and separable from all other issues in this proceeding; it is the only issue I seek to prosecute pro se, and my counsel would take no part in it; with regard to all other matters in this proceeding, my counsel would remain my sole representative and spokesman. Further, much--perhaps most--of the evidence submitted in support of and in opposition to the surcharge application would be documentary. Indeed, it may be that even if other branches of the instant application are granted, the Court may not order a hearing on the surcharge issue. But even if a hearing is ordered, the Court, faced with a limited, specific issue in a non-jury, civil proceeding of an entirely different nature than a trial, will have ample power to control the conduct of such hearing and to avoid any disruption whatever of this proceedings. In any event, I give the Court my solemn word that if I am permitted to act pro se in the prosecution of the surcharge claim, I will in no way delay or disrupt the speedy conduct of this proceeding. While I must insist upon my right to have the merits of the surcharge claim heard, and thus am bringing the present application, the Court should also recognize that I have everything to gain

and nothing to lose by the orderly and expeditious resolution of all issues

in this receivership. The words of Angela Davis in arguing successfully for permission to act as her own co-counsel in her recently-concluded trial in California are particularly appropriate to this case as well:

> ***"(T)he orderly and expeditious conduct of the court's business will not be hindered, hampered or delayed.
>
> "I can guarantee the Court that I have no, absolutely no intentions of creating any kind of disruptive activities in the courtroom. I am aware that if I am granted the request to act as co-counsel that I am subject to the same responsibilities and restrictions that any attorney that as a degree in law, and practices law as a profession would be subject to, and I think--and I can guarantee the Court that insofar as I exercise any degree of control over the events which unfold in this courtroom, there will be no disruptions. Of course, I can't speak for certain other parties in the courtroom, but I am extremely anxious myself that this case be speedily disposed of". People v. Davis, No. 3744, Cal. Superior Ct., Marin Co., Transcript of July 21, 1971, pp. 44-45.

(6) The surcharge claim seeks recovery for the receivership estate from the receiver, the withdrawn receiver, and their attorneys and accountants. Since I, both in my individual capacity and as sole general partner of Tilney & Company, have the equity remainder interest in the receivership estate, I respectfully submit that there is no question but that I have standing to maintain the surcharge claim.

(7) Pursuant to Rule 11 of the Federal Rules of Civil Procedure and Rule 4(b) of the General Rules of this Court, I hereby designate the address set forth below as the address at which service of papers may be made upon me in like

manner as service may be made upon an attorney:

"Sundown"
Centre Island
Oyster Bay, New York 11771

For the foregoing reasons, I respectfully urge the Court to grant this application and to sign the Order submitted herewith.

Frederick Tilney
Frederick Tilney

Sworn to before me this
28th day of June, 1972.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, : 67 Civ. 4676
DNE

-against- :

TILNEY & COMPANY, : ORDER
FREDERICK TILNEY,

Defendants. :

- x

At New York, New York in said District on the day of , 1972.

Upon the application of defendants (a) to have Frederick Tilney represent himself as individual defendant, and the partnership defendant, pro se, in connection with a certain claim for surcharge asserted herein in an affidavit sworn to by Frederick Tilney on April 17, 1972 and entitled "Supplemental Affidavit in Opposition to Application for Fees and in Support of Application for Surcharge", and (b) to file the aforementioned "Supplemental Affidavit" (heretofore lodged with the Court but not filed) and to submit additional evidence in support of the said surcharge claim; it is

ORDERED, that the affidavit sworn to by Frederick Tilney on April 17, 1972 and entitled "Supplemental Affidavit in Opposition to Application for Fees and in Support of Application for Surcharge", heretofore lodged with the Court be filed and entered on the docket herein, and the Clerk is so instructed; and it is further

ORDERED, that defendants be and hereby are granted

1180-A

leave to have Frederick Tilney represent himself as individual defendant herein, and to represent the partnership defendant herein, pro se, for the limited purpose only of prosecuting the surcharge claim asserted in the aforementioned "Supplemental Affidavit"; and it is further

ORDERED, that any further affidavits and/or memoranda in support of the said surcharge claim be served and filed on or before 1972; and it is further

ORDERED, that any affidavits and/or memoranda in opposition to the said surcharge claim be served and filed on or before , 1972; and it is further

ORDERED that a hearing on the said surcharge claim be held on , 1972 at M. in Room 618, United States Courthouse, Foley Square, New York, New York.

DAVID N. EDELSTEIN, Ch. J.
U.S.D.C., S.D.N.Y.

1180-B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

SECURITIES AND EXCHANGE COMMISSION, :
Plaintiff, :
67 Civ. 4676
DNE

-against-

:

TILNEY & COMPANY, :
FREDERICK TILNEY, :
Defendants.

AFFIDAVIT

- x

ROBERT F. WAGNER, being duly sworn, deposes and says:

1) That he is an attorney-at-law and a member of the firm of Wagner, Quillinan & Tennant, court appointed counsel to the Receiver of the assets of the above captioned defendants and is fully familiar with all the facts and circumstances heretofore had herein.

2) That this affidavit is made in opposition to the motion for an order granting Frederick Tilney leave to represent himself and Tilney & Company pro se, in connection with a certain so-called "surcharge" claim; granting the filing of a certain "supplemental affidavit" sworn to by Frederick Tilney the 17th day of April, 1972, and heretofore lodged with this Court, but not filed; and granting permission to submit additional evidence in support of said surcharge claim; and particularly in response to the affidavit of Frederick Tilney sworn to the 28th day of June, 1972, and submitted in support of said motion.

3) That the aforesaid motion is typical of the obstructive tactics which have been employed by Frederick Tilney throughout this proceeding.

As the Court is well aware, this defendant, who experience has shown to have a most litigious nature, has fought almost every effort of the Receiver and his counsel to bring the administration of this estate to a prompt and equitable conclusion. This attempt to institute a surcharge proceeding is nothing more than a tactic or ploy by which Frecerick Tilney hopes to reduce the amount of the administration fees to be allowed herein. It is quite apparent at this point, that Mr. Tilney feels that there is nothing to be lost by attempting to relieve this estate of its legal obligation to pay the fair and reasonable expenses of four and one-half years of administration by means of a preposterous counterclaim. It is respectfully submitted that this Court should not assist Mr. Tilney in this baseless attempt to maneuver the allowances to be awarded herein. To permit the prosecution of this surcharge, particularly by Mr. Tilney in person, would clearly place an unreasonable and wholly unnecessary burden on both the administrators in opposing said claim and this Court in hearing and deciding the same.

Moreover, the defendants herein are represented by highly respected and experienced counsel, who have refused to prosecute this so-called "surcharge" claim and, apparently, have advised Mr. Tilney against doing so. One of the functions of attorneys in legal proceedings is to screen material submitted by the parties they represent and to see

to it that the Court and all concerned are not burdened with spurious and unwarranted claims and allegations. In this case, defendants' counsel, one of the nation's foremost law firms, being in a position to evaluate every aspect of this proceeding, appears to have determined that the claims are unfounded. Accordingly, Frederick Tilney should not be permitted to

circumvent the considered judgment of his attorneys by prosecuting the said claims pro se.

4) That in his affidavit sworn to the 28th day of June, 1972, Frederick Tilney alleges that the surcharge claim is "easily distinguishable and separable from all other issues in this proceeding." This, however, is not the case. For example: the statements contained in Frederick Tilney's affidavit pertaining to the surcharge claim bear a strong similarity to the statements contained in his affidavit in opposition to the applications for allowances filed herein. Aside from the fact that Mr. Tilney takes inconsistent positions regarding the payment of allowances in the said affidavits, the issues raised in the affidavits are clearly not "easily distinguishable and separable" from one another. Your deponent finds it difficult to believe that Mr. Tilney would be able to keep his promise to refrain from participating in other matters relating to this Receivership, if he were permitted the opportunity to prosecute a claim "pro se".

WHEREFORE, it is respectfully requested that the Court, in the exercise of its discretion, deny the subject application of Frederick Tilney.

Robert F. Wagner

Robert F. Wagner

Sworn to before me this
17th day of August, 1972.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -against- TILNEY & COMPANY, FREDERICK TILNEY, Defendants.	67 Civ. 4676 PNE AFFIRMATION AS TO "SURCHARGE CLAIM"

STATE OF NEW YORK)
: SS : -
COUNTY OF NEW YORK)

The undersigned, an attorney-at-law admitted to practice law in the State of NewYork, and before the Bar of this Court, and appearing pro se herein, affirms the following statements under the penalties of perjury.

This affirmation is being submitted in response to the request of the Court to set forth the position of the affirmant, the withdrawn receiver, as to the jurisdiction of this Court generally, with respect to a claim seeking a surcharge from "officers of the court", and particularly with respect to the request or application herein of Frederick Tilney to represent himself and his partnership and to assert an alleged claim for surcharge said to be contained in a "Supplemental Affidavit in Opposition to Application for Fees and in Support of Application for Surcharge" sworn to April 17, 1972 ("Supplemental Affidavit") and heretofore rejected by this Court.

General Jurisdiction of Court
as to Surcharge Claims

This affirmant is of the opinion that the Court appointing a trustee, receiver or manager of any property has the jurisdiction, in fact the sole jurisdiction, to entertain a claim seeking a surcharge from said fiduciary, particularly when the claim is based upon the same alleged acts and conduct of the fiduciary advanced in opposition to the fiduciary's application for approval of his accounting and for fees, allowances and a discharge, and in support of the defendants' motion to reduce or expunge the said fees and allowances. The propriety, quality or character of the acts and conduct of the fiduciary in the administration of the estate and the property entrusted to him should be submitted to the Court once.

Leave to Proceed Pro Se on
the Supplemental Affidavit
Should be Denied

However, the foregoing assumes that the claim seeking a surcharge is a proper claim, made in a proper manner. The subject request or application is neither a proper claim, nor made in a proper manner nor upon proper papers.

The Court, the fiduciary or fiduciaries involved, and his or their bonding companies, should not be twice burdened with the requirement to answer or defend the same charges and innuendoes. It is inherently inconsistent for the defendants to oppose the applications for fees and allowances and to recommend the award of reduced allowances, and thereafter, while

said applications are sub judice, to assert the right, based upon the same alleged charges, to a surcharge grossly in excess of the recommended allowances.

In the case at bar; the defendant has advanced the same complaints about the acts and conduct of the fiduciaries in support of his position that the final fees and allowances of the fiduciaries should be reduced or expunged. The matter of said fees and allowances is now sub judice. He should not be permitted, under the guise of an "application for surcharge", to swamp this Court and the fiduciaries with the same prolix and verbose papers, particularly where the same contains the many improper, unexecuted, irrelevant and incompetent affidavits heretofore stricken by the Court.

This Court should not permit the defendant to proceed, pro se; or otherwise; on the "Supplemental Affidavit." The Court's attention is directed to affirmant's application brought on by order to show cause and heard on May 4, 1972, as a result of which all of the affidavits, signed and unsigned, of third persons were to be returned, removed, deleted and stricken from the file. The Court's attention is also directed to all of the other facts on which the order to show cause was granted, specifically the knowledge and involvement of defendant's counsel in failing to prevent the Court and the other parties from being misled by the fraudulent and false appearance of the papers.

Despite the foregoing, this Court is again confronted with an application, supported by defendant's counsel, based upon the same papers. To be specific, said counsel himself now requests this Court to file papers known to be fraudulent. This attempt should be dealt with and denied summarily.

Counsel's memorandum deliberately mischaracterizes the prior action of this Court.

Substitution of attorneys has not been denied. This Court did deny the substitution of one particular attorney in place of defendants' attorneys because of the obvious conflict of interest on the part of said proposed attorney. The defendants could have chosen any other of the multitude of attorneys practicing and available in this area. For reasons of their own such a choice was not made; but the defendants cannot now be heard to complain that they were compelled to remain with their present counsel who refused to support, or offer, or represent the defendants in connection with the so-called Supplemental Affidavit . . . for Surcharge.

The defendants have already asserted their claim to recover damages by way of offset against the fees requested by the fiduciaries. Even defendants' counsel admit (Defendants' Memorandum, p.3) that said method, by way of offset, is a sufficient remedy to refute a claim of deprivation of rights.

Furthermore, it is farcical for said counsel to

maintain that the "surcharge claim" is easily distinguishable and separable from the other issues in this proceeding. The very issues before this Court at this moment are the quality and propriety of the acts and services and conduct of the fiduciaries with respect to their management of the property and their administration of the estate, and the value of said acts and services. Counsel and the defendants have vigorously opposed the applications for fees and allowances, and have put in issue each and every act and alleged omission to act and have claimed that the Court must reduce or expunge the allowances.

How can one distinguish and separate the "surcharge claim" from the matters now sub judice? The fact is that the "claim" is the same, only that the defendants insist that they are entitled to recovery of $900,000, whereas their counsel heretofore could not, in good faith, support such a spurious demand.

The prejudice to the administration claimants continues and in fact is exacerbated. Delay becomes compounded and justice to the administration claimants denied. This has been made known to this Court on many prior occasions.

Every attempt to move this matter along to a proper conclusion, met, and meets, obstacles and resistance from the defendants, and even the petitioner, the S.E.C. Adding insult to past injury, the Commission has attempted to justify the small amounts of its recommended allowances on the ground that there has been an unduly long delay in bringing this matter to

completion, charging the claimants and favoring the very defendants (not innocent creditors) who were the conscious cause of the delay.

Further delay should not be countenanced.

It is respectfully submitted that leave to Frederick Tilney to represent himself and his firm pro se in connection with the "claim for surcharge" asserted in that certain "Supplemental Affidavit In Opposition to Application for Fees and in Support of Application for Surcharge" sworn to by him on April 17, 1972, and "to file" the said "Supplemental Affidavit", should be denied. The said Affidavit is a fraud on the Court and the other interested parties.

Dated: New York, N. Y.
August 17, 1972.

I. Alan Harris

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -

SECURITIES and EXCHANGE COMMISSION,

Plaintiff,

-against- 67 Civ. 4676

TILNEY & COMPANY,
FREDERICK TILNEY,

Defendants.

- -

EDELSTEIN, Ch.J.:

OPINION

The receiver, the former co-receiver, counsel to the receiver and the accountants to the receiver have applied for final administrative fees in this equity receivership. Messrs. Joseph C. Hogan, and I. Alan Harris were appointed co-receivers, and, since Mr. Harris' withdrawal as co-receiver Mr. Hogan has been acting as sole receiver. The law firm of Wagner, Quillinan & Tennant was retained as counsel to the receivers, and Hertz, Herson & Co. (successors to B. Bernard Greidinger & Co.) were retained as the accountants to the receivers. The accounting firm of Louis D. Blum & Co. was also retained at the inception of this receivership to update the records and prepare federal and state tax returns for the fiscal year 1967.

Detailed written applications were filed by each of the applicants. Attached to the applications were detailed reports of services rendered and expenses incurred. A hearing was held on the application.

Tilney and Company (Tilney) is a registered securities firm organized as a partnership. Frederick Tilney (F. Tilney) is the only general partner of Tilney & Co. Tilney and F. Tilney have been enjoined on consent from conducting business. The plaintiff, the Securities and Exchange Commission (The Commission), charged the defendants with various violations of bookkeeping and net capital regulations. Section 15(c)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78 o(c)(3) and Rule 17 C.F.R. 240.15c3-1. After a hearing both Tilney and F. Tilney consented to the appointment of the co-receivers. The services for which compensation is sought arose in the receivership of the defendant's estate.

The order of appointment of the co-receivers provided that the receivers were to have full power to marshal all the assets of the defendants and to liquidate the estates of the defendants in order to pay the creditors of the defendants. The receivers were authorized to employ attorneys

and accountants. At the time the receivership was created it was conjectured the estate assets totalled about $995,084. ($719,084 representing the firm's assets and $276,000 representing the personal estate of F. Tilney). In addition, during the course of the receivership the estate received additional assets--$370,000--recovered by the receivers in the form of favorable judgments.

The major areas of work of the receivership included proceedings to reduce liabilities and increase assets, the sale and liquidation of assets, and the payment of the public investor customers and general creditors of Tilney. The receivers were very successful in reducing estate liabilities under very difficult circumstances. They are to be commended for their diligence and performance. Regrettably it must be noted that the attitude and conduct of F. Tilney did not make the tedious negotiations involved in liquidating this estate any less burdensome for the receivers. For example, their success is demonstrated by the fact the receivership settled for $20,000, with court approval, an action for two million dollars commenced by the City of Nome, Alaska, against the receivership estate. Due to the conscientious conduct of the receivers the creditors of the estate have now been paid

one hundred percent on the principal amount of their claims.

The administration of this receivership was complex. A major task confronting the receivers was the examination and reconstruction of Tilney's records. In order to ascertain the extent of liabilities and the amount of assets in the estate it was necessary to reconstruct the Tilney records. The task of reconstructing the records was complicated by the fact that Tilney's business operations were conducted from three separate offices. Tilney also had collected money from numerous customers but in many instances failed to deliver the securities. Matters in this receivership were further complicated by the existence of other F. Tilney business entities, the assertion of family claims, and the frequently used business device of F. Tilney of collateralizing loans with stock owned by Tilney & Company and cross-guaranteeing the collateralized loans. The collateralized stock had to be traced and the loan agreements disentangled. Also, many of the assets of Tilney consisted of bank securities that could only be disposed of in a very narrow market. Therefore it was necessary that these stocks be sold in a deliberate and carefully timed manner. In the sale of these infrequently traded assets the receivers acted diligently

and effectively, thereby obviating a disastrous wholesale liquidation. Indiscriminate selling of these assets could have destroyed the market completely.

The granting of allowances involves a complex amalgamation of considerations. Surface Transit Inc. v. Saxe, Bacon & O'Shea, 266 F.2d 862,875 (2d Cir. 1959). In reviewing applications for administrative fees it is established that courts are to apply a standard of "reasonableness." Salient factors often considered in evaluating reasonableness are the time and labor required (but not actually expended) in the proper performance of duties, the fair value of such time, labor and skill measured by conservative business standards, and the degree of dispatch with which the work of the receivership is conducted, measured against the complexity of the problems presented. United States v. Code Products, 362 F.2d 669, 673 (3rd Cir. 1966), United States v. Larchwood Gardens, 404 F.2d 1108 (3rd Cir. 1968), appeal after remand 420 F.2d 531. Other factors are the obstacles encountered and the quality and skill the circumstances require. Perhaps of greatest importance is the benefit produced by the receiver for the creditors. In awarding administrative allowances the court must not countenance vicarious generosity nor permit

compensation for duplication of services by the various administrators. Finn v. Childs, 181 F.2d 431 (2d Cir. 1950). In re Gilbert, 276 U.S. 294 (1927).

A valuable aid to the court in making its determination is the recommendation of the Securities and Exchange Commission. The Commission's recommendation represents the expert opinion of a wholly disinterested agency skilled and experienced in receivership matters. Although the recommendation of the Commission may not take the place of the court's independent judgment it is entitled to serious consideration.

The defendants assert that the fees and allowances sought by the former receiver, I. Alan Harris, should be denied in their entirety and that the fees and allowances sought by the remaining receiver, by counsel to the receiver, and the accountants, should be reduced substantially. Mr. Tilney asserts that many transactions and attempts of the receivers to liquidate the various assets of the estate were of questionable value. A hearing was held on the application for fees. At this hearing the parties were allowed to present the evidence they wished on the question of compensation. Mr. Tilney, in support of his position

that fees should be reduced, submitted various affidavits, (including unsigned affidavits to which Mr. Harris has objected) together with a time study that purported to analyze the time sheets of the applicants. After a total consideration of the pros and cons presented the court finds that Mr. Tilney's position is unpersuasive. The defendants have not submitted papers on the application of L. Blum & Co. The Securities and Exchange Commission has submitted its recommendation as to the applications. The Commission recommends that the fees applied for should be reduced.

Application of I. Alan Harris

The former co-receiver, I. Alan Harris, has submitted an application requesting $57,500 plus $534.66 in expenses for his services to the receivership estate. Defendants contend that because of an alleged breach of fiduciary duty Mr. Harris' application should be denied.

In May and June 1968, while co-receiver, Mr. Harris negotiated and sold shares of stock in the Waddington Bank to a friend, Jack H. Studley. The stock was sold at $50 per share. Prior to this attempts were made to sell these shares of stock through various brokerage houses. The best offer received was for $47 per share. (See record June 5,

1969, p.3). (Mr. Harris asserts that prior to the sale of stock the defendants had been fully advised of his friendship with Mr. Studley.) In the early part of 1969 Mr. Harris, allegedly at the exhortation of Mr. Studley, agreed to accept a seat on the Board of Directors of the Waddington Bank. The necessary shares of stock needed for qualification as a director were transferred from Studley to Harris.

In May 1969 Mr. Tilney approached Mr. Hogan and questioned the propriety of the price at which the stock was sold. Mr. Tilney alleged that the stock was worth considerably more than $50 per share. A conference was held with this court, at which time the facts concerning Mr. Harris' sale of the Waddington stock were brought forth. The Tilney position at that time was that the $50 sales price of the stock was much below market value and that resale of the shares would result in a significant increase in the assets of the estate. In any event, the transaction between Harris and Studley was rescinded. It was determined that a public auction would be held. After public advertising in national newspapers, and after the distribution of a brochure prepared by F. Tilney to potential purchasers, the shares were sold at public auction for $50 per share. An upset price of

$50 was established, and a professional auctioneer retained. The highest and only bid received was for $50 per share.

Mr. Filney's allegations are that Mr. Harris' conduct as a co-receiver was illegal and breached a fiduciary duty owed to the estate. The defendants' contention that this receivership was conducted in violation of 28 U.S.C. 20001, 2004, is frivolous and without any merit. Tanzer v. Huffins, 412 F.2d 221 (3rd Cir. 1969). Defendants' allegation that Mr. Harris breached his fiduciary duty to the estate is not supported by any credible facts in the record. While Mr. Harris' judgment in failing to disclose his friendship with Studley to the court and in accepting a seat on the Board of the Waddington Bank does not invite approbation, it is not grounds to bar the recovery by Mr. Harris of the reasonable value of his services. The Commission seems to be of a similar mind. It does not oppose the awarding of reasonable fees to Mr. Harris.

The services rendered by Mr. Harris were considerable. Mr. Harris is an attorney whose primary area of experience is in the field of business and banking law. He brought this experience to bear in this receivership in negotiations with banks, disentangling loan agreements, tracing collateral,

and helping to clarify the involved financial relationships of the defendants. Further, as all the applicant's time sheets indicate, numerous conferences and hearings were held. Mr. Harris has applied for compensation for 884.7 hours of service.

This court has carefully reviewed Mr. Harris' meticulous time records and proof of expenditures. He has included in his application forty hours of time spent in preparing the application for allowances. This time is disallowed. In re Polycast 289 F.Supp. 712,720 (D. Conn. 1968). Also disallowed are 76 hours of unaccounted time and thirty hours of time claimed subsequent to Mr. Harris' resignation.

In all the circumstances a fee of $30,800 is indicated. Against this, however, there must be offset the cost of resale of the Waddington stock. Approximately $4000 was spent in advertising and auction expenses and approximately $3000 worth of time that the co-receiver and counsel spent in the resale of the stock. Accordingly, a fee of $23,800 is approved for Mr. Harris. Mr. Harris is also entitled to compensation of $534.66 for disbursements.

Application of Joseph C. Hogan

Mr. Hogan, an attorney, was appointed as co-receiver with Mr. Harris. Subsequent to Mr. Harris' resignation Mr. Hogan has acted as the sole receiver, and has necessarily assumed full responsibility for the administration of the receivership. Mr. Hogan has applied for compensation amounting to $65,790.80 for 1012 hours of service. Mr. Hogan has furnished time records. Forty hours of unaccounted time are disallowed. Mr. Tilney has opposed the requested allowances as being excessive.

Mr. Hogan's most significant contribution to the receivership has been in connection with the sale of assets of the receivership estate. Mr. Hogan is a man of extensive business and legal experience and his services have been of great value to the estate. Mr. Hogan's contribution and success as receiver is attested to by the fact that all the creditor claimants of the estate have received one hundred percent payment of their claims. Without Mr. Hogan's careful and prudent selling of the estate assets this result would not have been realized. This factor must weigh heavily in determining the compensation for which he has applied. In the execution of his duties as receiver Mr. Hogan acted in

the public interest and is to be commended for the high quality of his service and diligence. Nonetheless, he can not be compensated on the basis of commercial billing rates. In fixing the amount of Mr. Hogan's compensation this court must consider that additional work still will be required. It would be unwarranted not to reflect this factor in the compensation awarded. In all of the circumstances a fee of $43,560 is indicated. Mr. Hogan's application to apply for disbursements at the conclusion of the receivership is granted.

Application of Wagner, Quillinan and Tennant

The law firm of Wagner, Quillinan and Tennant was retained as counsel by the receiver and the former receiver. This law firm is experienced in receivership, bankruptcy, and reorganization matters. They have applied for compensation of $96,935 and $3,339.90 for disbursements. The time records submitted in support of their application indicate that counsel expended 1601 hours of time in matters pertaining to the receivership. Mr. Tilney has opposed the requested application as being excessive.

The legal difficulties encountered during the course of this receivership were considerable. Counsel to

the receiver ably handled the many legal obstacles involved in the sale and liquidation of the estate's assets. Counsel's efforts materially aided in reducing the liabilities of the estate and in increasing the assets of the receivership.

After a consideration of the time records submitted this court concludes that some of the objections raised by the Commission need to be considered. Duplication in compensation of services must be avoided, even if such duplication is unwitting and perhaps unavoidable as may have been the case here.

In fixing the appropriate amount of compensation this court must consider that additional work still will be required. It would be unwarranted not to reflect this factor in the compensation awarded. In all of the circumstances a fee of $55,660 is indicated. Counsel is also awarded $3,339.90 for disbursements.

Application of Hertz Herson & Co.

The accountants to the receiver applied for $89,189 compensation and $674.77 for disbursements. The accountants time records indicate they have expended 2484 hours in service to the receivership. This application is opposed by

Mr. Tilney as being excessive.

The services of this accounting firm were vital to the effective and judicious administration of this receivership. The accountants performed an extensive analysis and investigation into the complex and entangled affairs of the defendants. There were substantial accounting, reporting, and tax services concerning the receiver's administration that had to be performed. Also substantial accounting work was required to effectuate the distribution of money to the creditor claimants. They are to be commended for their professional competence and the superior quality of their work.

The Securities and Exchange Commission has recommended an acceptable rate of hourly compensation for senior partners, junior partners and others. The court has considered the recommendation of the Commission and also the fact that additional work still will be required. It would be unwarranted not to reflect this factor in the compensation awarded. In all the circumstances a fee of $61,552 is indicated. The accountants are also allowed payment of $674.77 for disbursements.

Application of Louis D. Blum

Louis D. Blum & Co., a firm of public accountants, has applied for compensation of $6825 for services rendered. This firm was retained by Mr. Harris to complete and up-date the books of Tilney & Co. for the fiscal year 1967. No opposition has been submitted to this application. Under all the circumstances a fee of $6825 is indicated.

The Securities and Exchange Commission has moved that prior to the payment of any administrative allowances all public investors be paid six percent interest on their claims. No opposition has been interposed to this motion. Accordingly, the motion is granted.

So ordered.

DAVID N. EDELSTEIN, Ch. J.

Dated: New York, N.Y.
October \ 1972

HERTZ, HERSON & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS

TWO PARK AVENUE
NEW YORK, NEW YORK

OFFICES
BOSTON, MASS.
CHARLOTTE, N. C.
NEW YORK, N. Y.

December 21, 1972

Joseph C. Hogan, Receiver For
Tilney & Company and Frederick Tilney
New York, N.Y.

Dear Sir:

In accordance with your request, we have prepared the attached financial report of Tilney & Company (a partnership) and Frederick Tilney (an individual) in receivership by order of the United States District Court, Southern District of New York, for the year ended October 31, 1972, which consists of the following:

Exhibit A - Statement of Assets and Liabilities Subject to Realization and Liquidation at October 31, 1972
B - Summary of Cash Receipts and Disbursements For The Year Ended October 31, 1972
C - Summary of Changes In Financial Position For The Year Ended October 31, 1972

Supporting Schedules:
A-1 - Investments in Certificates of Deposits and U.S. Treasury Bonds.
A-2 - Securities.
A-3 - Cash Value of Life Insurance.
A-4 - Schedule of Liabilities to Security Business Customers - No Claims Filed.
A-5 - Accounts Payable Trade - No Claims Filed.
B-1 - Operating and Receivership Expenses.
B-2 - Sales of Securities.
B-3 - Dividends and Interest Received.

Notes to Financial Statements.

Our examination included a review of the Receiver's books and records, but did not include verification of certain securities which are not controlled or in the possession of the Receiver. Asset valuations contained in the financial statement were furnished and/or estimated by the Receiver, as a basis for presentation of the fair and realizable amounts which might result from sale and liquidation. In addition, as stated in Notes 4 and 7 to financial statements, various administration fees and expenses incurred during the receivership and interest payable to security business customers have not yet been fully determined and/or paid and, accordingly, are omitted from the financial statements. In the circumstances, we are precluded from expressing an opinion on the financial statements as a whole.

This special purpose report is intended for use solely by the Receiver and other interested parties to the proceedings in formulating appropriate guidelines for the ultimate realization and liquidation of the receivership.

Very truly yours,

Hertz, Herson & Company

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JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

STATEMENT OF ASSETS AND LIABILITIES SUBJECT TO
REALIZATION AND LIQUIDATION (NOTE 1)
OCTOBER 31, 1972

EXHIBIT A

Assets	Total	Tilney & Company	Frederick Tilney
Cash and Investments:			
Cash	$ 8,003	$ 8,003	$ -
Certificates of deposit, at cost (Schedule 1)	65,000	65,000	-
Investments in U.S. Government bonds, at cost, which approximates market value ($40,000 maturity value) (Schedule 1)	38,862	38,862	-
Securities (valued by Receiver at estimated conservative liquidating values - Note 1) (Schedule 2)	1,536	1,536	-
Transfers and advances during receivership	-	23,877	(23,877)
	113,401	137,278	(23,877)
Real Estate:			
Residential property, Centre Island, N.Y., and certain adjacent lots (valued at appraised estimated liquidating value)	152,000	-	152,000
Unimproved property, East Norwich, N.Y. (less mortgage held by Marine Midland Tinker National Bank) (Note 6)	-	-	-
Land and building, Hicksville, N.Y. at cost (Note 2)	38,466	38,466	-
	190,466	38,466	152,000
Assets Subject to Claims, Liens and Offsets:			
Cash and securities held by Long Island National Bank under collateral loan agreement to loan of Governmental Statistical Corporation (contra) (Note 5) (Schedule 2)	60,755	60,755	-
Claim for interest receivable of $1,955 due 1/1/69, on investment in City Commerce Corporation debentures, less amount offset for alleged indebtedness - subject to determination	-	-	-
	60,755	60,755	-
Cash Value of Life Insurance, less loan principal and interest (Schedule 3)	32,785	13,181	19,604
Other Assets Not Presently Valued (Notes 1 and 2):			
Various assets not valued since amounts realizable are subject to recovery - principally sums due from affiliated companies (in excess of $650,000), fixed assets and miscellaneous receivables	-	-	-
Total Assets Presently Valued	$397,407	$249,680	$147,727

Liabilities	Total	Tilney & Company	Frederi Tilne
Receivership Administration and Preferred Creditors:			
Administration fees and expenses - subject to determination (Note 4)	$ -	$ -	$ -
Secured Creditors:			
Mortgage on residential property - Equitable Life Assurance Society of the U.S.	18,412	-	18,41
Unsecured Creditors (Note 8):			
Customer accounts - no claim filed (Schedule 4) (Note 3)	133	133	-
Dividends payable to customers - unclaimed (Note 3)	1,105	1,105	-
Accounts payable trade - no claim filed (Schedule 5)	1,762	1,762	-
Interest payable (Note 7)	-	-	-
	3,000	3,000	-
Contingent Liabilities:			
Guarantee and collateral pledged under loan of Long Island National Bank to Governmental Statistical Corporation $62,000 principal plus accrued interest approximating $5,000 (contra) (Note 6)	60,755	60,755	-
Income taxes - subject to determinations on audit	-	-	-
Obligation under mortgage liability to Marine Midland Tinker National Bank - East Norwich, N.Y. property (Note 7)	-	-	-
	60,755	60,755	-
Total Liabilities	82,167	63,755	18,41
Tentative Excess of Assets Presently Valued Over Liabilities, (Which Exclude Undetermined and Unpaid Administration and Interest Costs)	315,240	185,925	129,31
Total Liabilities and Tentative Excess of Assets	$397,407	$249,680	$147,72

See accompanying notes to financial statements and letter of transmittal.

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EXHIBIT B

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SUMMARY OF CASH RECEIPTS AND DISBURSEMENTS
FOR THE YEAR ENDED OCTOBER 31, 1972

	Total	Tilney & Company	Frederick Tilney
Cash - October 31, 1971	$ 10,465		
Cash Receipts:			
Proceeds from sale of U.S. Treasury Bonds (Schedule B-2)	34,681	$ 34,681	$ -
Dividend and interest received (Schedule B-3)	7,492	6,516	976
Redemption of certificates of deposit	230,000	230,000	-
Judgement proceeds from sheriff's auction sale of real estate of Governmental Statistical Corp.	35,103	35,103	-
	307,276	$306,300	$ 976
Cash Disbursements:			
Purchase - certificates of deposit	255,000	$255,000	
Payments of creditor claims	18,265	18,265	
Operating and receivership expenses (Schedule B-1)	36,473	25,611	$10,862
	309,738	$298,876	$10,862
Cash - October 31, 1972	$ 8,003		

See accompanying notes to financial statements and letter of transmittal.

EXHIBIT C

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SUMMARY OF CHANGES IN FINANCIAL POSITION
FOR THE YEAR ENDED OCTOBER 31, 1972

		Net Equity				
	Cash	Investments and Other Assets Increase (Decrease)	Liabilities (Increase) Decrease	Total	Tilney & Company	Frederick Tilney
Cash Receipts (Exhibit "B")	$307,276	$ -	$ -	$307,276	$306,300	$ 976
Cash Disbursements (Exhibit "B")	(309,738)	-	-	(309,738)	(298,876)	(10,862)
Non-Cash Transactions and Adjustments:						
Increase in cash value of life insurance, less applicable loans		6,099	-	6,099	3,658	2,441
Net increase in certificates of deposit acquired by purchase		25,000	-	25,000	25,000	-
Net decrease in U.S. Treasury obligations sold		(32,922)	-	(32,922)	(32,922)	-
Decrease in receivable on judgement claim - collected in current year		(35,062)	-	(35,062)	(35,062)	-
Decrease in liability accounts pursuant to payments approved under court order -						
Security broker		-	4,453	4,453	4,453	
Customer claims		-	112	112	112	
Accounts payable - trade		-	10,698	10,698	10,698	
Due to Dorothy Tilney (charged and paid as advance by Tilney & Company)		-	3,002	3,002	38	2,964
Decrease in liability account - N.Y.C. commercial rent and occupancy tax		-	77	77	77	
Net write-down of liabilities from book values to court approved amounts		-	1,577	1,577	1,577	
Amortization of mortgage principal		-	2,885	2,885	-	2,885
Increase (decrease) in net assets during the current year	(2,462)	(36,885)	22,804	(16,543)	(14,947)	(1,596)
Excess of assets valued over liabilities at October 31, 1971 (before administrative and interest costs)	10,465	426,289	(104,971)	331,783	200,872	130,911
Excess of Assets Valued Over Liabilities at October 31, 1972 (Before Administrative and Interest Costs)	$ 8,003	$389,404	$(82,167)	$315,240	$185,925	$129,315

See accompanying notes to financial statements and letter of transmittal.

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EXHIBIT A
SCHEDULE 1

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SUMMARY OF INVESTMENTS
OCTOBER 31, 1972

	Maturity Date	Interest Rate	Cost
CERTIFICATES OF DEPOSIT			
Manufacturers Hanover Trust Company:			
#27555	11/ 6/72	5%	$ 5,000
27558	11/27/72	5%	20,000
27566	11/13/72	5%	30,000
27574	11/ 6/72	5%	10,000
			$65,000
U.S. TREASURY BONDS			
Maturity Value			
$40,000	11/15/75	7%	$38,862

See accompanying notes to financial statements and letter of transmittal.

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SCHEDULE OF SECURITIES (1)
OCTOBER 31, 1972

Number of Shares or Face Amount	Description	Tilney & Company (1)
Securities on Hand		
6,509	Central Alaska Utilities, Inc. (formerly Spenard Utilities)	$ -
25	Life Insurance Securities Corporation	-
10	Alaska Airlines (4)	60
41	Matanuska Valley Bank (5)	1,476
380	Long Island Commercial Review	-
200	Lithium Corp. Canada (held by Francis I. DuPont & Co.) - worthless	-
		$ 1,536
Securities, Cash and Notes Held by Long Island National Bank (2)		
Securities and Notes:		
$95,000	Alaska State Development Corp. - 4%-8/1/73 (payable to Governmental Statistical Corporation) (subject to verification)	$ -
$59,000	Governmental Statistical Corporation notes (to Tilney & Co.)	-
756	Matanuska Valley Bank (6) (registered in name of Tilney & Co.)	27,216
640	Matanuska Valley Bank (3) (6) (registered in name of Frederick and Dorothy Tilney)	-
$19,000	Commercial Review, Inc., 4% Notes Receivable (3) (registered in name of Frederick Tilney)	-
130	Bank of Suffolk County (3) (registered in name of Frederick Tilney)	-
31	National Bank of Alaska (3) (registered in name of Dorothy Tilney)	-
Cash		27,216
		33,539
Total		$60,755

See accompanying notes to financial statements and letter of transmittal.

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SCHEDULE OF SECURITIES (1)
OCTOBER 31, 1972

(1) Security valuations stated were furnished by the Receiver at conservative estimated liquidating values and exclude values applicable to securities claimed by others. Values for certain securities were unavailable.

(2) Securities and notes are held under collateral loan agreement to loan of Governmental Statistical Corporation in the principal amount of $62,000, plus accrued interest. The bank also holds cash of Tilney & Company in the amount of $33,539.29.

(3) No values assigned by Receiver as securities are subject to claim to ownership by Dorothy Tilney.

(4) Not registered in name of the receivership estate.

(5) Represents 5% stock dividend received in prior year (apparently related to part of shares held by Long Island National Bank) - ownership to approximately 3 shares may be claimed by Dorothy Tilney. Shares received on dividend distribution are subject to verification.

(6) Long Island National Bank did not confirm receipt of shares under 5% stock dividend paid by Matamuska Valley Bank in prior year (see item 5).

See accompanying notes to financial statements and letter of transmittal.

EXHIBIT A
SCHEDULE 3

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SCHEDULE OF LIFE INSURANCE POLICY VALUES
OCTOBER 31, 1972

Insurance Company	Policy No.	Life Covered	Owner of Policy	Beneficiary	Cash Surrender Value	Accumulated Dividends	Loans and Interest Payable	Net Cash Value		
								Total	Tilney & Company	Frederick Tilney
The Equitable Life Assurance Society of the United States	62 314 638	Frederick Tilney	Receivers (1)	Dorothy M. Tilney	$14,360	$ 3,140	$ -	$17,500	$ -	$17,500
Aetna Life and Casualty Co.	P 814 654	Frederick Tilney	Frederick Tilney	Charles M. Fanoni (2)	1,752	1,445	1,093	2,104	-	2,104
New England Mutual Life Insurance Company	2 214 918	Dorothy McCabe Tilney	Tilney & Company	Tilney & Company	14,803	6,849	15,557	6,095	6,095	-
Massachusetts Mutual Life Insurance Company	2 465 410	Frederick Tilney	Tilney & Company	Tilney & Company	18,937	5,547	17,398	7,086	7,086	-
					$49,852	$16,981	$34,048	$32,785	$13,181	$19,604

(1) Policy was assigned to I. Alan Harris and Joseph C. Hogan, Receivers, by Dorothy M. Tilney.
(2) Subject to change upon instructions to insurance company.

See accompanying notes to financial statements and letter of transmittal.

EXHIBIT A
SCHEDULE 4

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP)

SCHEDULE OF LIABILITIES TO SECURITY BUSINESS CUSTOMERS - NO CLAIMS FILED
OCTOBER 31, 1972

	Amount Per Records
Larry M. Belmont	$ 19.50
Clifford V. Bissel	.80
Dr. Carl M. and Anna Bowman	2.50
Billy Barton Brown	28.60
Jerald D. and Betty Cowan	7.80
Rolf & Marie Helle	30.00
George M. & Hazel Jonovitz	3.75
Francis M. & Sharon Koenig	4.50
Norman McDonald, Jr.	6.25
McKenzie Musick	4.68
Jerry P. Smith	2.25
William Arthur and Thetus Smith	2.50
Dyonisco and Theodore Tingcang	8.75
Sgt. Raymond Walker	10.63
	$132.51

See accompanying notes to financial statements and letter of transmittal.

EXHIBIT A
SCHEDULE 5

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP)

SCHEDULE OF ACCOUNTS PAYABLE TRADE - NO CLAIMS FILED
OCTOBER 31, 1972

	Amount Per Books
Appeal Printing Company	$ 26.25
City of Anchorage	32.28
Daytimes	9.66
Prudden's Digest of Investment	50.00
Standard & Poors	20.10
Wall Street Journal	26.00
Westly Associates	116.52
Friden, Inc.	12.34
Journal of Commerce	32.00
Merrill, Lynch, Pierce, Fenner and Smith, Inc.	4.76
Moody's Investors Service	319.20
National Quotation Service	607.95
Xerox Corporation	504.81
Total	$1,761.87

See accompanying notes to financial statements and letter of transmittal.

EXHIBIT B
SCHEDULE 1

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SCHEDULE OF OPERATING AND RECEIVERSHIP EXPENSES
FOR THE YEAR ENDED OCTOBER 31, 1972

	Total	Tilney & Company	Frederick Tilney
Real estate taxes	$22,773	$20,173	$ 2,600
Life insurance premiums	6,400	3,842	2,558
Homeowner's insurance	735	-	735
Mortgage amortization	2,885		2,885
Interest on mortgage	1,197		1,197
Rent applicable to prior years	600	600	-
Fuel oil	887	-	887
Legal fees	128	128	-
Insurance - office equipment	206	206	-
Appraisal fee	350	350	-
Fidelity bond	200	200	-
N.Y.C. commercial rent tax	103	103	-
Printing	9	9	-
	$36,473	$25,611	$10,862

See accompanying notes to financial statements and letter of transmittal.

EXHIBIT B
SCHEDULE 2

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SALES OF SECURITIES
FOR THE YEAR ENDED OCTOBER 31, 1972

Number of Shares	Description	Proceeds From Sale			Original Cost or Tax Basis	Gain
		Total	Tilney Company	Frederick Tilney		
25M	U.S. Treasury Bonds, 4-1/4%, 5/15/74	$24,456	$24,456	$ -	$23,206	$1,250
10M	U.S. Treasury Bonds, 7%, 11/15/75	10,225	10,225	-	9,716	509
		$34,681	$34,681	$ -	$32,922	$1,759

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See accompanying notes to financial statements and letter of transmittal.

EXHIBIT B
SCHEDULE 3

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

DIVIDENDS AND INTEREST RECEIVED
FOR THE YEAR ENDED OCTOBER 31, 1972

	Total	Tilney & Company	Frederick Tilney
Interest:			
U.S. Government obligations	$3,658	$3,658	$ -
Certificates of deposit	2,858	2,858	-
Dividends - Central Alaska Utilities	976		976
	$7,492	$6,516	$976

See accompanying notes to financial statements and letter of transmittal.

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JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

NOTES TO FINANCIAL STATEMENTS
OCTOBER 31, 1972

Note 1 - Valuation of Assets

Asset values were furnished by the Receiver based upon bids, appraised values, and estimates consistent with conservative values, which may ultimately be realized upon liquidation. Certain assets including various securities, investments and receivables from subsidiaries and affiliates, etc., were not presently valued pending subsequent determination of amounts recoverable and may be applied in payment of creditor claims. Certain of the security investments are not readily marketable.

Note 2 - Receivables From Affiliates

The amounts recoverable on investments and receivables from affiliated companies cannot be presently determined by the Receiver and his counsel. A judgment has been filed against Governmental Statistical Corporation in favor of the estate in the approximate amount of $500,000. Real property owned by the affiliated company has been sold by the sheriff in partial satisfaction of this judgment. The Receiver bought in this property in the prior year at a cost of $38,466, of which $35,103 (less costs in connection with sale) was recovered in the current year and applied against the judgment.

Note 3 - Liabilities to Customers of Tilney & Company (Security Business)

Unclaimed customer account credit balances and dividends are reflected in the financial statement pending final determination. See note 7 regarding interest accrued on customer balances.

Note 4 - Administration Fees and Expenses

Application for allowances for fees and expenses by the Receiver, former Receiver, counsel and accountants to the Receivers allowed by the Court, pursuant to order dated December 21, 1972, amounted to $195,946.33 and may be subject to appeal by the interested parties:

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

NOTES TO FINANCIAL STATEMENTS
OCTOBER 31, 1972

Note 4 - Administration Fees and Expenses (cont'd.)

Joseph C. Hogan, Receiver.....	$ 43,560.00
I. Alan Harris, Former Receiver.....	24,334.66
Wagner, Quillinan & Tennant, Attorneys to Receiver.	58,999.90
Hertz, Herson & Company, Accountants to Receiver...	62,226.77
Louis D. Blum & Company, Accountants.....	6,825.00
	$195,946.33

Note 5 - Contingent Liability to Long Island National Bank

Tilney & Company and Frederick Tilney are contingently liable under a collateral loan agreement to a loan by Long Island National Bank to Governmental Statistical Corporation in the amount of $62,000, plus accrued interest approximating $5,000. Cash and securities of Tilney & Company held by the bank was tentatively valued at $60,755. The bank also holds as collateral a 4% note in the face amount of $95,000, issued by the The Alaska State Development Corporation to Governmental Statistical Corporation, maturing Aug[illegible] 1973, and various other securities alleged to be owned by Dorothy Ti[illegible] the wife of Frederick Tilney. The contingent liability is stated in the financial statement at the same value as the Tilney & Company collateral held by the bank.

Note 6 - Mortgage - Marine Midland Tinker National Bank

The Receiver and Frederick Tilney, by court order dated July 8, 1970, executed a mortgage on certain undeveloped land in Norwich and East Norwich, N. Y. to Marine Midland Tinker National Bank in the amount of $115,828 with 7½% interest, in full payment and satisfaction of the bank's claim for loan principal of $98,000 plus accrued interest, which resulted from a 1966 loan to Frederick Tilney and Dorothy Tilney. The land was appraised at $103,500 and the bank paid to the Receiver $5,500 as further consideration for the mortgage. In the event that the assets of the receivership are insufficient to pay the full amount of all just claims against it (including administration expenses) the bank will pay to the Receiver an amount, which when subtracted from the sum of $103,500, will make the prorated value of the distribution received by the bank equal to the prorated share of each other creditor. The receivership is subject to terms and conditions as set forth in the mortgage agreement.

JOSEPH C. HOGAN, RECEIVER FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

NOTES TO FINANCIAL STATEMENTS
OCTOBER 31, 1972

Note 7 - Interest Payable

Pursuant to court order, security business customers of Tilney & Company will be paid interest on their allowed claims from December 18, 1967 to date of payments at the annual rate of 6%, which will approximate $40,000. This amount, which will be paid in the subsequent period, has not been provided for in the accompanying financial statements.

Note 8 - Claims Expunged

Liabilities claimed by creditors were reduced for amounts expunged under court orders. Claims have been expunged aggregating in excess of $370,000 applicable to family members and affiliated companies of Frederick Tilney. Claims by Dorothy C. Tilney, a daughter of Frederick Tilney, in the amount of $6,231 and by Dorothy Tilney, wife of Frederick Tilney, in the amount of $3,002 have been allowed and paid.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

TILNEY & COMPANY,
FREDERICK TILNEY,

Defendants.

67 Civ. 4576

ORDER TO SHOW CAUSE

AT NEW YORK, IN SAID DISTRICT, THIS 1st DAY OF DECEMBER, 1972.

Upon the annexed affidavit of JOSEPH C. MOGAN, Receiver of the assets of the above captioned defendants, sworn to the 8th day of November, 1972, and upon all other proceedings had herein, it is

ORDERED, that LONG ISLAND NATIONAL BANK show cause before this Court in Room 2204 of the United States Courthouse, Foley Square, Borough of Manhattan, City, County and State of New York, on the 14th day of December, 1972, at 2:00 o'clock in the P.M. noon of that day, or as soon thereafter as counsel can be heard, why an order should not be made ordering said LONG ISLAND NATIONAL BANK to liquidate the loan of Governmental Statistical Corporation, and to turn over to the Receiver certain collateral being held by said Bank upon the terms and conditions set forth in the annexed affidavit of Joseph C. Mogan sworn to November 8, 1972; and it is further

ORDERED, that service of a copy of this order and the annexed affidavit upon Long Island National Bank, Securities and Exchange Commission, Tilney & Company and Frederick Tilney, by the mailing of same by certified mail, return receipt requested, on or before the 4th day of December, 1972, shall be deemed sufficient.

Dated: New York, New York
December 1, 1972.

s/ David N. Edelstein
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

against

TILNEY & COMPANY,
FREDERICK TILNEY,

Defendants.

67 Civ. 4676

AFFIDAVIT IN SUPPORT OF MOTION FOR TURN-OVER OF ASSETS

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JOSEPH C. HOGAN, being duly sworn, deposes and says:

1. I am the duly appointed, qualified and acting Receiver of the assets of the above captioned defendants.

2. I make this affidavit in support of an application for an order directing Long Island National Bank ("Bank") to turn over to me, as Receiver herein, the property hereinafter described, said property being held by the Bank as collateral security for an outstanding loan made by the Bank to Governmental Statistical Corporation ("G.S.C.").

3. Upon information and belief, on October 20, 1965, Frederick Tilney and Tilney & Company, the defendants herein, together with Dorothy M. Tilney and G.S.C., executed a collateral loan agreement in favor of respondent, Long Island National Bank.

A copy of said collateral loan agreement is annexed hereto as Exhibit "A".

4. Upon information and belief, G.S.C. became indebted to Long Island National Bank in the amount of $62,000.00 plus interest at the rate of 9% per annum, either before or after the execution of the aforesaid collateral loan agreement.

5. Upon information and belief, the note representing the aforesaid principal amount has been renewed by the Bank a number of times despite my objections to any such renewal.

6. Upon information and belief, the following property is in the possession of the Bank and is being held by it under the aforesaid collateral loan agreement as security for the aforesaid loan to G.S.C.:

a) Note of Alaska State Development Corporation, dated August 1, 1963, in the face amount of $95,000., due August 1, 1973, bearing interest at the rate of 4% per annum, registered in the name of Governmental Statistical Corporation;

b) 756 shares of Matanuska Valley Bank, registered in the name of Tilney & Company;

c) 31 shares of National Bank of Alaska, registered in the name of Dorothy Tilney;

d) Notes of Governmental Statistical Corporation in the face amount of $59,000., bearing interest at the rate of 10% per annum, registered in the name of Tilney & Company;

e) $4,000. face amount certificate of deposit in the name of Dorothy Tilney;

f) 640 shares of Matanuska Valley Bank, registered in the name of Frederick Tilney and Dorothy Tilney;

g) 130 shares of Bank of Suffolk County, registered in the name of Frederick Tilney;

h) Notes of Long Island Commercial Review in the face amount of $19,000., bearing interest at the rate of 7% per annum, registered in the name of Frederick Tilney;

i) Cash in the approximate amount of $33,539.29 belonging to Tilney & Company.

7. As indicated above, valuable assets of both defendants herein, over which I have control by virtue of this proceeding, are presently in the hands of the Bank. On several occasions since the inception of this proceeding, I have requested the Bank to liquidate its loan to G.S.C. and to thereafter turn over to me the remaining collateral security. In each instance the Bank has refused to comply with my request.

8. By letter dated December 28, 1971, and as Receiver of two of the guarantors, namely Frederick Tilney and Tilney & Company, I tendered to the Bank the sum of $30,765.71, which, when taken together with the sum of $33,539.29, presently being held by the Bank as collateral pursuant to the aforesaid collateral loan agreement and to which I am entitled as Receiver, amounts to

$64,325.00. This sum represents the principal amount of the aforesaid note, $62,000. and interest thereon from August 2, 1971 to January 2, 1971. A copy of said letter is annexed hereto as Exhibit "B".

9. This tender was made for the purpose of repaying the obligation of G.S.C. to the Bank and was subject to the condition that the Bank, pursuant to law, assign the G.S.C. note to me and release and turn over to me the collateral referred to above in paragraph 6, and any other collateral in substitution thereof or in addition thereto being held by it subject to the collateral loan agreement dated October 20, 1965.

10. By letter dated January 4, 1972, I was informed by counsel for the Bank that the Bank had rejected the aforesaid tender, and would enter into no arrangement with me with regard to this particular loan in the absence of a court order. A copy of this letter is annexed hereto as Exhibit "C".

11. The aforesaid position of the Bank with respect to this loan is both contrary to law and a direct interference with the administration of this receivership.

In light of the recent decision by the Court regarding administration allowances and the payment of interest to public creditors, the surplus assets in the Bank's possession are needed in order to make the payments called for in said decision and the order based thereon. It is respectfully submitted that the Bank (whether acting on the instructions of Mr. Tilney or otherwise) should not be permitted to continue to frustrate the winding up of this receivership by continuing to renew the G.S.C.

loan, thereby tying up valuable assets which belong in this receivership.

It should be noted that the market value of the aforesaid collateral is, by its very nature, subject to great fluctuation depending on changing economic circumstances. Any prolonged delay in my exercise of control over these assets may well result in the loss of favorable market prices for these assets.

12. Should the Court grant the relief requested herein, there can be no adverse affect on the Bank. The Bank will be paid the full amount of its loan, plus all interest thereon; the receivership, in turn, will have the use of needed assets for the purpose of winding up this proceeding.

Moreover, the relief sought herein is consistent with the law of this State which provides that when an indorser or guarantor of a note secured by collateral pays the obligation, he is entitled to the collateral.

13. In addition to the foregoing, this receivership is a judgment creditor of G.S.C. in the sum of $610,156.25, said judgment having been obtained by confession of judgment and docketed in the office of the Clerk of the County of Nassau.

Accordingly, upon the payment by me of the Bank's loan, I am, by both operation of law and as a judgment creditor of G.S.C., entitled to the delivery of the excess collateral remaining in the hands of the Bank.

14. This application is brought on by order to show cause due to the necessity of obtaining the most expeditious

resolution of this matter and to avoid any undue fluctuation in market conditions which may adversely affect the collateral in the hands of the Bank.

WHEREFORE, I respectfully request that the Court sign the annexed order to show cause and, upon the return thereof, that an order be made directing Long Island National Bank to apply the aforesaid sum of $23,539.29 presently held by it, plus any additions thereto, in partial satisfaction of the G.S.C. loan; to accept from me a check for the balance of said loan; and upon such payment to turn over to me all remaining collateral referred to in paragraph 6 above, and any other collateral in substitution thereof or in addition thereto, and for such other and further relief as may be just and proper.

Joseph C. Hogan

Sworn to before me this
8 day of November, 1972.

Cyril A. Kelleher

CYRIL A. KELLEHER
Notary Public, State of New York
No. 31-7205925
Qualified in New York County
Commission Expires March 30, 1974

COLLATERAL LOAN AGREEMENT

New York, [illegible], 19[illegible].

In order to induce LONG ISLAND NATIONAL BANK (hereinafter called "BANK") to make such advances, loans, discounts or extensions of credit and to purchase such notes and other instruments for the payment of money, and any security documents relative thereto, or conditional contracts of sale, chattel mortgages, leases and other lien or security instruments, as it may deem advisable, directly or indirectly, to or for the account of, or from the undersigned or any one or more of them, jointly and/or severally, and/or to grant to or for the account of the undersigned such renewals, extensions, forbearances, releases of collateral or other relinquishments of legal rights, as the Bank may deem advisable, and in consideration of advances, loans, discounts, extensions of credit, overdrafts or purchases, due or to become due, heretofore made to or from the undersigned, and for other valuable consideration, receipt of which is hereby duly acknowledged, the undersigned (each, any and all of whom are herein thus referred to, and who, if two or more in number, shall be jointly and severally bound hereunder) agree as follows:

As collateral security for the prompt and unconditional payment of any and every obligation and liability of the undersigned to the Bank and claims of every nature and description of Bank against the undersigned (including, but not limited to, costs and attorneys' fees incurred by the Bank in the collection, whether by suit or by any other means, of negotiable or non-negotiable instruments which have been purchased by the Bank from the undersigned or those arising out of or in any way connected with warranties made by the undersigned to the Bank in connection with negotiable or non-negotiable instruments deposited with or purchased by the Bank), whether or not represented by negotiable instruments or other writings (including, but not limited to, purchase and repurchase agreements) whether now existing or hereafter incurred, originally contracted with the Bank and/or with another or others and now or hereafter owing to or acquired in any manner by the Bank, whether contracted by the undersigned alone or jointly and/or severally with another or others, direct or indirect, absolute or contingent, secured or not secured, matured or not matured (all of the foregoing being hereinafter called "Obligations"), the undersigned does hereby pledge, assign and transfer to and deposit with Bank or its agents the following property:

All collateral now in the possession of, or delivered hereafter, by any of the undersigned, to the Bank.

The undersigned agree to deliver to Bank additional security and make payment on account of undersigned's Obligations, all to the Bank's satisfaction, should, in the Bank's judgment, the value of the collateral security decline or be impaired. Any other property now or hereafter pledged, assigned and transferred to or deposited with the Bank or its agents by the undersigned or otherwise coming into the possession of the Bank or its agents in any way shall be held subject to all the terms of this agreement as collateral security for the prompt and unconditional payment of said Obligations. In order to secure further the payment of said Obligations, the Bank is hereby given a continuing lien for the amount of all such Obligations upon any and all moneys, securities and any and all other property of the undersigned and the proceeds thereof, now or hereafter actually or constructively held or received by or in transit in any manner to or from the bank, its correspondents or agents from or for the undersigned whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into the possession of the Bank in any way. The Bank is also given a continuing lien and/or right of set-off for the amount of said Obligations upon any and all deposits (general or special) and credits of the undersigned with, and any and all claims of the undersigned against, the Bank at any time existing and the Bank is hereby authorized at any time or times, without prior notice, to apply such deposits or credits, or any part thereof, to such Obligations and in such amounts as the Bank may select, although said Obligations may be contingent or unmatured, and whether the collateral security therefor is deemed adequate or not. (All of the foregoing, together with any property, now or hereafter pledged, assigned and transferred to or deposited with the Bank or its agents by the undersigned to secure said Obligations, are hereinafter collectively called "Collateral Security.")

The undersigned agrees to repay such Obligations and perform and meet the terms and conditions thereof.

The undersigned consents that without the necessity for any reservation of rights against the undersigned and without notice to or further assent by the undersigned, the liability of any guarantor, indorser, surety, indemnitor, or any other party for or upon said Obligations or said Collateral Security may, from time to time, in whole or in part be renewed, extended, modified, prematured, compromised or released by the Bank, as it may deem advisable, and that any Collateral Security or liens for any of said Obligations may, from time to time, in whole or in part, be exchanged, sold or surrendered by the Bank, as it may deem advisable, all without impairing or affecting the liability of the undersigned. The Bank shall not be liable for any failure to collect or demand payment of, or protest or give any notice of nonpayment of, said Collateral Security, or any part thereof, or for any delay in so doing, nor shall the Bank be under any obligation to take any action whatsoever in regard to said Collateral Security or any part thereof. Any and all stocks, bonds, or other securities held by the Bank hereunder may, without notice and whether or not a default exists, be registered and held in the name of the Bank or its nominee; the Bank (whether or not such right of registration has been exercised and whether or not a default exists) or such nominee may, without notice

Exhibit "A"

LD-102-8/62

exercise all voting and corporate rights, including any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to such stocks, bonds or other securities as if the absolute owner thereof, including, without limitation, the right to exchange at its discretion, any and all of such stocks, bonds or other securities for other stocks, bonds, securities or any other property upon the merger, consolidation, reorganization, recapitalization or other readjustment of any corporation issuing the same or upon the exercise by the issuing corporation or the Bank of any right, privilege or option pertaining to such stocks, bonds or other securities, and in connection therewith, to deposit and deliver any and all of such stocks, bonds, or other securities with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine, all without liability except to account for property actually received by it, but the Bank shall have no duty to exercise any of the aforesaid rights, privileges or options and shall not be responsible for any failure to do so or delay in so doing.

The Bank may sell all or any part of the Collateral Security although the Obligations may be contingent or unmatured, whenever in its absolute and unrestricted discretion the Bank considers such sale necessary for its protection. Any such sale may be made in the manner herein provided for the sale of Collateral Security, without prior demand for margin or additional margin or for payment on account or notice of sale or intention to sell or of any other demands or notices whatsoever; the making of any such demands or the giving of any such notices in any one or more instances shall not constitute a waiver of the right of the Bank to sell said Collateral Security as herein provided without any demand of notice whatsoever or of the right of the Bank to accelerate the maturity of said Obligations as herein provided.

If the undersigned shall fail to perform any agreement herein contained or contained in any security document or other agreement delivered by the undersigned to the Bank (and the opinion of the Bank as to the existence of such failure of performance shall be conclusive and binding upon the undersigned), or if default occurs in the punctual payment of any sum payable upon any of said Obligations or said Collateral Security, or if the undersigned or any obligor, maker, indorser, acceptor, surety or guarantor of, or any other party to, said Obligations or said Collateral Security (each and all of whom are included in the word "them" as hereinafter used in this paragraph) shall default in respect of any liabilities or obligations (present or future, absolute or contingent, secured or unsecured, matured or unmatured, joint or several, original or acquired) of any of them to the Bank, or in the event any of them (being an individual) shall die or (being a partnership or corporation) shall be dissolved, or in the event of the death or suspension of the usual business activities of any member of any partnership included in the terms "them" as hereinabove defined, or in the event any of them shall become insolvent (or if insolvency be imminent or threatened in respect of any of them), shall commit an act of bankruptcy, make an assignment for the benefit of creditors, call a meeting of any creditors, appoint a committee of any creditors or a liquidating agent, offer to, or receive from, any creditors a composition or extension of any of their indebtedness, make or send notice of an intended bulk sale, assign, pledge or mortgage any account receivable or other property, suspend payment, wholly or partly suspend or liquidate their usual business, fail, after demand, to furnish any financial information or to permit inspection of their books or records of account, make any misrepresentation to the Bank for the purpose of obtaining credit or an extension of credit, or fail to pay any tax, or fail to withhold, collect or remit any tax or tax deficiency when assessed or due, or fail to pay any obligations, whether in writing or not, or if any proceeding in bankruptcy, or any proceeding, suit or action, (at law, in equity, or under the provisions of the Bankruptcy Act or amendments thereto) for reorganization, composition, extension, wage earners' plan, receivership, liquidation or dissolution shall be begun by or against any of them, or in the event of the application for the appointment, or the appointment in any jurisdiction, at law or in equity, of any receiver, conservator, rehabilitator or similar officer, or committee of, or of any of the property of, any of them, or if a judgment shall be recovered or a warrant of attachment or for distraint or a notice of tax lien, or an injunction shall be issued against, or against any of the property of, any of them, or in the event any proceedings under Article 43 of the New York Civil Practice Act or amendments thereto be commenced against any of them, or if at any time, in the sole opinion of the Bank, the financial responsibility of Borrower shall become impaired or unsatisfactory to the Bank, or if the condition or affairs (financial, business or otherwise) of any of them shall so change as, in the sole opinion of the Bank (whose opinion shall be conclusive in the matter) shall impair its security or increase its credit risk, or if the Bank otherwise deems itself insecure, then, in any of these events, all of said Obligations, although not yet due, shall, without notice or demand, forthwith become and be immediately due and payable, notwithstanding any time or credit otherwise allowed under any of said Obligations or under any instrument evidencing the same.

Upon the happening of any of the events hereinabove set forth, the Bank, without demand of performance, advertisement or notice of intention to sell or of the time or place of sale or to redeem, or other notice or demand whatsoever to or upon the undersigned or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon said Collateral Security, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase, and deliver said Collateral Security, or any part thereof, and any property whatsoever of any kind to which it may be entitled as Collateral Security for said Obligations, in one or more parcels, at public or private sale or sales, at any exchange, broker's board or at the Bank's offices or elsewhere, at such prices as it may deem best, for cash, or credit, or for future delivery, without assumption of any credit risk, with the right to the Bank upon any such sale or sales, public or private, to purchase the whole or any part of said Collateral Security so sold, free from any right or equity of redemption in the undersigned, which right or equity is hereby expressly waived and released.

The Bank may apply the net proceeds of any such collection, receipt, appropriation, realization or sale, after deducting all costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of said Collateral Security or in any way relating to the rights of the Bank hereunder, including counsel fees, to the payment, in whole or in part, in such order as the Bank may elect, of one or more of said Obligations, whether then due or not due, absolute or contingent, making proper rebate for interest or discount on items not then due and accounting for the surplus, if any, to the undersigned, who shall remain liable to the Bank for the payment of any deficiency with legal interest.

The undersigned waives any and all notice of the acceptance of this agreement or of the creation, renewal, extension or accrual of any of said Obligations, or of the reliance by the Bank upon this agreement. Said Obligations, and each of them, shall conclusively be presumed to have been created, contracted or incurred in reliance upon this agreement and all dealings between the undersigned and the Bank shall likewise conclusively be presumed to have been had or consummated in reliance upon this agreement.

Exhibit "A"

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Any notice to, or demand on, the undersigned elected to be given or made by the Bank shall be deemed effective, if not first otherwise made or given, when forwarded by mail, telegraph, cable, radio, telephone or otherwise to the last address or telephone number of the undersigned appearing on the books of the Bank, with the same effect as if the same was actually delivered to and received by the undersigned in person. The Bank shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder and no waiver whatever shall be valid unless in writing, signed by the Bank, and then only to the extent therein set forth. A waiver by the Bank of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Bank would otherwise have had on any future occasion. No executory agreement shall be effective to change or modify or to discharge in whole or in part this agreement unless such executory agreement is in writing and signed by the Bank. All rights and remedies of the Bank hereunder shall be cumulative and may be exercised singly or concurrently. The undersigned hereby waives the benefit of any homestead or other exemptions in respect of said Obligations. The Bank may assign or transfer this instrument and may deliver the property pledged hereunder, or any part thereof, to any assignee or transferee and such assignees or transferees shall thereupon become vested with all of the powers and rights given to the Bank in respect thereof; and the Bank shall thereafter be forever relieved and discharged from any liability or responsibility in the matter, but with respect to any property not so transferred, the Bank shall retain all powers and rights hereby given it. This agreement may be terminated only by written notice to that effect, relating solely to new Obligations of the undersigned subsequently incurred, delivered by the undersigned to the Bank and duly receipted for by it; and in the event of such termination (whether by such notice, by operation of law or otherwise), the undersigned and his, its or their respective successors, executors, administrators and assigns shall nevertheless remain liable with respect to Obligations created or arising theretofore and with respect to such Obligations and any renewals, extensions thereof or other liabilities arising out of the same, this agreement shall continue in full force and effect and the Bank shall have rights herein provided for as if no such termination had occurred.

The term "Bank," as used throughout this agreement, shall be deemed to include LONG ISLAND NATIONAL BANK and all its branches and departments and any individual, partnership or corporation acting as nominee or agent for LONG ISLAND NATIONAL BANK, and any corporate subsidiary of LONG ISLAND NATIONAL BANK, the stock of which is owned or controlled, directly or indirectly, by LONG ISLAND NATIONAL BANK. The term "undersigned," as used throughout this agreement, shall include the individual or individuals, association, partnership or corporation named herein as "undersigned" and (a) any successor individual or individuals, association or partnership or corporation to which all or substantially all of the business or assets of said undersigned shall have been transferred, (b) in the case of a partnership, any new partnership which shall have been created by reason of the admission of any new partner or partners therein or the dissolution of the existing partnership by death, resignation or other withdrawal of any partner, and (c) in the case of a corporation, any other corporation into or with which said undersigned shall have been merged, consolidated, reorganized or absorbed.

The undersigned agrees that if an attorney is used, from time to time, to enforce any of the rights herein granted to the Bank or to obtain payment of said Obligations at maturity (expressed or declared) whether by suit or by any other means whatsoever, an attorney's fee of 20% of the principal and interest due on account of said Obligations shall be added thereto. The undersigned, in any litigation (whether or not arising out of or relating to said Obligations or said Collateral Security or any of the matters contained in this agreement) in which Bank and any of them shall be adverse parties waives trial by jury and the right to interpose any defense, set-off or counterclaim of any nature or description. This agreement shall be construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and his or its seal the day and year first above written, intending and declaring this to be a duly sealed instrument.

Governmental Statistical Corp.

By: _____ (L.S.)

Tilney & Co.

By: _____ (L.S.)

_____ (L.S.)

_____ (L.S.)

Exhibit "A"

Individual(s) Acknowledgment
State of New York) SS.:
County of Nassau)

On this 20 day of October 1965 before me personally appeared Dorothy M. Tilney Frederick Tilney,
to me known, and known to me to be the individual(s) described in and who executed the foregoing instrument and (s)
they they duly acknowledged to me that executed same.

ANNA KRIKALO
NOTARY PUBLIC State of New York
No. 30-7366570
Qualified in Nassau County
Commission Expires March 30, 1966

Anna Krikalo
Oct. 20, 1965

Partnership Acknowledgment
State of New York) SS.:
County of Nassau)

On this 20th day of October 65 before me personally appeared Frederick Tilney who signs as Tilney and Company,
to me known, and known to me to be the members of the partnership of Tilney and Company
mentioned and described in and which executed the foregoing instrument, and the said members duly acknowledged to me that they executed said instrument for and on behalf of and with the authority of the said firm of Tilney and Company, for the uses and purposes therein mentioned.

ANNA KRIKALO
NOTARY PUBLIC State of New York
No. 30-7366570
Qualified in Nassau County
Commission Expires March 30, 1966

Anna Krikalo
Oct 20, 1965

Corporate Acknowledgment
State of New York) SS.:
County of Nassau)

On this 20th day of Oct., 19 65 before me personally came Frederick Tilney,
to me known, who being duly sworn did depose and say that he resides at Centre Island, Oyster Bay;
that he is the Chairman/Ex. Officer of Governmental Statistical Corporation, the
corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal
affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corpora-
tion, and that he signed his name thereto by like order.

ANNA KRIKALO
NOTARY PUBLIC State of New York
No. 30-7366570
Qualified in Nassau County
Commission Expires March 30, 1966

Anna Krikalo
Oct 20, 1965

Exhibit "A"

HOGAN & KELLEHER
ATTORNEYS AT LAW
99 BROADWAY, NEW YORK, NEW YORK 10006
WHITEHALL 4-5676
CABLE ADDRESS JONDWYER

JOSEPH C. HOGAN
CYRIL A. KELLEHER
FRANCIS G. LEFFLER
DONALD MACDONALD
ROBERT MORRIS

BRIAN S. JONES
GREGORY J. PARISI

December 28, 1971

Long Island National Bank
11 Broadway
Hicksville, New York 11802

Gentlemen:

Re: Loan -- Governmental Statistical Corporation

Governmental Statistical Corporation, under a loan agreement, as collateralized by Frederick Tilney, Tilney and Co. and Dorothy M. Tilney, is indebted to your bank in the amount of $62,000.00 plus interest thereon.

As Receiver of the assets of Frederick Tilney and Tilney and Co. by Order of the Federal Court, Southern District of New York, and as judgement creditor of Governmental Statistical Corporation, I made demand that your bank sell an Alaska State Development Corporation Note, held as part collateral under the aforementioned loan agreement, and apply the proceeds of the sale together with the cash escrow of $33,539.29 in payment of the loan. After satisfaction, any surplus moneys, notes and securities held as collateral were to be delivered to me as Receiver.

In view of your refusal to comply with my demand as aforementioned, I hereby tender the sum of $30,765.71, which, taken together with the escrow funds, would constitute full payment of the aforesaid note for $62,000.00 plus interest thereon to January 2, 1972.

Simultaneous with the payment, and as a condition thereof, the bank shall assign and deliver the Governmental Statistical note to me as subrogee and release and deliver to me the following collateral:

1) Note of Alaska State Development Corporation, dated August 17, 1963, in the face amount of $95,000.00, due August 1, 1973, bearing interest at the rate of 4% per annum, registered in the name of Governmental Statistical Corporation;

Exhibit "B"

2) 756 shares of Matanuska Valley Bank, registered in the name of Tilney & Company;

3) 31 shares of National Bank of Alaska, registered in the name of Dorothy Tilney;

4) Notes of Governmental Statistical Corporation in the face amount of $59,000.00, bearing interest at the rate of 10% per annum, registered in the name of Tilney & Company;

5) $4,000.00 face amount certificate of deposit in the name of Dorothy Tilney;

6) 640 shares of Matanuska Valley Bank, registered in the name of Frederick Tilney and Dorothy Tilney;

7) 130 shares of Bank of Suffolk County, registered in the name of Frederick Tilney;

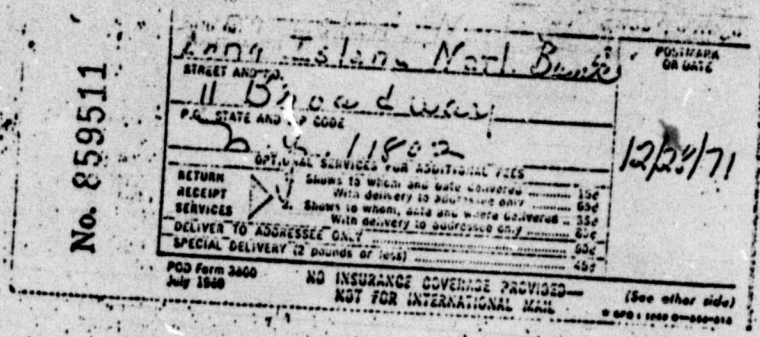
8) Notes of Long Island Commercial Review in the face amount of $19,000.00 bearing interest at the rate of 7% per annum, registered in the name of Frederick Tilney;

and any other collateral in substitution thereof or in addition thereto being held by it subject to the collateral loan agreement dated October 20, 1965.

Very truly yours,

Joseph C. Hogan
Receiver, Tilney & Co. and
Frederick Tilney, individually

Exhibit "B"


No. 859511

Anna Tsien - Nat. Bank
11 Broadway
N.Y. 11802

POSTMARK OR DATE
12/24/71

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered ..... 15¢
With delivery to addressee only ..... 65¢
2. Shows to whom, date and where delivered .. 35¢
With delivery to addressee only ..... 85¢

DELIVER TO ADDRESSEE ONLY ..... 60¢
SPECIAL DELIVERY (2 pounds or less) ..... 45¢

PCD Form 3800
July 1968

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)

Exhibit "B"

LAW OFFICES
CHARLES R. CARROLL
150 NEWBRIDGE ROAD
HICKSVILLE, LONG ISLAND
NEW YORK 11802

P. O. BOX 7[illegible]
516 WE 1-[illegible]

CHARLES R. CARROLL
WALTER J. CARROLL
N.Y. BAR AND MASS BAR

January 4, 1972

Hogan & Kelleher, Esqs.
29 Broadway
New York, New York 10006

ATTENTION: Joseph C. Hogan, Esq.

RE: Governmental Statistical Corporation
with Long Island National Bank

Dear Mr. Hogan:

Your letter of December 28th to the Bank has been referred to us for reply. As mentioned in the bank's letter to you of December 31st, it is our understanding that the sum of $30,765.71 was not enclosed with your letter.

With regard to the demand in your letter that the Bank deliver itemized collateral to you as subrogee, it is the position of our client that certain of the items of collateral mentioned by you are claimed by parties other than Governmental Statistical Corporation and that, in any event, no arrangement will be entered into with you with regard to this particular loan in the absence of a Court Order so directing our client to proceed.

Very truly yours,

WJC/av

cc: Mr. James C. Dinkelacker, President
Long Island National Bank

Exhibit "C"

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

67 Civ. 4676

TILNEY & COMPANY and FREDERICK TILNEY,

Defendants.

BEFORE:

HON. DAVID N. EDELSTEIN,

District Judge

New York, New York
November 27, 1972 - 2:45 p.m.

APPEARANCES:

WAGNER, QUILLINAN & TENNANT, ESQS.,
Attorneys for Receivers
ROBERT G. BENISCH, ESQ.,
and
ROBERT T. WAGNER, ESQ.,
Of Counsel.

I. ALLAN HARRIS, ESQ.,
Withdrawn Co-Receiver

JOSEPH C. HOGAN, ESQ.,
Attorney for Guardian ad Litem

CADWALADER, WICKERSHAM & TAFT, ESQS.,
Attorneys for Defendants,
TERENCE F. GILHEANY, ESQ.,
Of Counsel.

APPEARANCES (Continued):

ALSO PRESENT:

DR. B. BERNARD GREIDINGER

MRS. TILNEY

FRANKLIN D. ORMSTEN, ESQ.,
Attorney for SEC

- - -

THE CLERK: SEC versus Tilney.

Both sides ready?

MR. BENISCH: Shall I proceed, your Honor?

THE COURT: You may.

MR. BENISCH: Your Honor, on or about October 19, 1972, this Court made a decision in respect to the awar of allowances in this proceeding. These allowances were made by the accountants, the attorneys for the receiver, the receiver, Mr. Hogan, and the withdrawn receiver, Mr. Harris.

This application has been brought on, your Honor, because of certain language contained in the Court's decision which seems to indicate that in making the award with respect to the existing receiver, Mr. Hogan, counsel and perhaps the accountants, as well, that the Court had taken into consideration the possibility or probability that additional work would

have to be done by the receivers, accountants and attorneys between the date of this award and the final winding up of the receivership estate, and that the award and the amount of the award set forth in the Court's decision took into consideration any prospective work which might be necessitated in winding this matter up.

Now, your Honor, an examination of the present status of the receivership account, or the cash balance on hand indicates that there is presently on hand in the receiver's possession approximately $113,000 in cash.

Against that, the Court has provided that interest be paid to the public creditors of this receivership, which interest comes to approximately $41,000.

So that if we take the allowances made by the Court plus the creditor interest to be paid, we have a cash deficit of approximately $123,000 at the present time.

This means that further assets, which are under the control of the receiver, would have to be liquidated to make up this cash deficit. These assets are not readily capable of liquidation; they consist of real property, several parcels on Long Island, one of which is the Tilney home named Sundown, and certain securities and monies which are on hand and being held by the Long

will be no additional application for allowances here.

THE COURT: Anything further, Mr. Ormsten?

MR. ORMSTEN: No, your Honor.

THE COURT: Mr. Gilheany?

MR. TILNEY: I would like to say something, your Honor.

THE COURT: You have no standing to say anything. The second branch of the application is granted. The Court reserves decision on the first branch of the application.

It leaves to the administrators to submit affidavits concerning any further extension of time at a point where you can foresee how much time has been spent in liquidation, or how much more time you can project as being reasonable for a completion of the liquidation of this estate in order to meet the demands of the judgment.

I would also indicate that all haste and expedition be made to wind up this estate, and I would ask the administrators to proceed at a full pace.

MR. HOGAN: Your Honor, as receiver, may I ask for a direction from this Court to Mr. Tilney to desist in his obstructive tactics.

THE COURT: Mr. Hogan --

MR. HOGAN: Now, I understand that as of a week ago Friday in Anchorage, Alaska -- it so happened the President of this corporation called his office in Alaska -- Mr. Tilney was in the office demanding of his secretary information as to what became of City Commerce debentures which he formerly had in his name and he stated to her at that time that he wanted to know because he thought there would be a court order directing them to return the securities.

Now, this happened in Anchorage, Alaska a week ago Friday.

About three days before your opinion came down, a person whom I knew intimately who lives out in the Island landed by plane in center island -- he commutes by plane -- I told him it might be on the market. He did go on the premises. Mr. Tilney accosted him just as he was leaving the grounds. He didn't go in the house, threw him off verbally and told him he had just been that afternoon --

MR. TILNEY: I object now.

MRS. TILNEY: May I say something, sir?

MR. HOGAN: Let me finish.

MR. GILHEANY: Your Honor, we can avoid a difficult scene if Mr. Hogan could put his statements

in writing in an affidavit and perhaps we could have adequate time to reply. We didn't understand that this was to be the subject matter of this hearing.

THE COURT: That is not the subject matter of this hearing, Mr. Gilheany, and I am not going to hear any more on this subject. I would merely indicate and suggest that if Mr. Tilney, or anybody in his behalf, obstructs the order of this Court and intervenes without authority, there are appropriate remedies available.

I would ask that this receivership be wound up at the earliest possible time.

Is that clear, Mr. Gilheany?

MR. GILHEANY: It is indeed, your Honor.

THE COURT: If there is no further business, the Court stands adjourned.

- - -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	67 Civ. 4676 D.N.E.
-against-	
TILNEY & COMPANY, FREDERICK TILNEY, Defendants.	ORDER FIXING ALLOWANCES

At New York, in said District, this 21st day of 1972:

Upon the motion of the Securities and Exchange Commission that customer creditors of Tilney & Company be paid interest on their claims and no opposition to said motion having been interposed; and upon the applications for allowances filed herein by Joseph C. Hogan, the receiver of the assets of Tilney & Company and Frederick Tilney, I. Alan Harris, former co-receiver, Wagner, Quillinan & Tennant, attorneys for the receiver and former co-receiver, Hertz Herson & Co., accountants to the receiver and former co-receiver, and Louis D. Blum & Co., former accountants to Tilney & Company retained by the former co-receiver to complete and up-date the books of Tilney & Company for the 1967 fiscal year; and upon the recommendations of the Securities and Exchange Commission as to said allowances, which recommendations are filed herein; and hearings as to the aforesaid interest and allowances having been had before this court on the 19th day of April, and the 4th day of May, 1972, and

due deliberation having been had thereon; and this court having filed its opinion dated the 19th day of October, 1972; and a hearing as to an application for reconsideration of said opinion having been had before this court on the 27th day of November, 1972; it is

ORDERED, that the customer creditors of Tilney & Company whose claims have been approved by this court be and they hereby are awarded interest at the rate of six per cent per annum on the amount of their respective claims, as allowed, from December 18, 1957 to the date of the order of this court directing distribution or partial distribution of said award; and it is further

ORDERED, that the receiver is authorized and directed to make payment of interest to each customer creditor of Tilney & Company as hereinabove set forth, said payment to be made prior to the payment of any administrative allowances provided for by this order; and it is further

ORDERED, that:

1. The reasonable compensation for all services rendered in this proceeding by Joseph C. Hogan, receiver, is the sum of $43,560.00 and that Joseph C. Hogan be and he hereby is allowed the sum of $43,560.00 in full payment for such services, and is granted leave to apply to this court for allowance of costs and expenses at the conclusion of this receivership;

2. The reasonable compensation for all services rendered in this proceeding by I. Alan Harris, former co-receiver, is the sum of $23,800.00 and the amount of

costs and expenses incurred by him is the sum of $534.66 and that I. Alan Harris be, and he hereby is allowed the sum of $23,800.00 in full payment for such services and the sum of $534.66 as full reimbursement for such costs and expenses;

3. The reasonable compensation for all services rendered in this proceeding by Wagner, Quillinan & Tennant, counsel to the receiver and former co-receiver, is the sum of $55,660.00 and the amount of costs and expenses incurred by said firm is the sum of $3,339.90 and that Wagner, Quillinan & Tennant be, and it hereby is allowed the sum of $55,660.00 in full payment for such services and the sum of $3,339.90 as full reimbursement for such costs and expenses;

4. The reasonable compensation for all services rendered in this proceeding by Hertz Herson & Company, accountants to the receiver and former co-receiver is the sum of $61,552.00 and the amount of costs and expenses incurred by said firm is the sum of $674.77 and that Hertz Herson & Company be and it hereby is allowed the sum of $61,552.00 in full payment for such services and the sum of $674.77 as full reimbursement for such costs and expenses;

5. The reasonable compensation for all services rendered in this proceeding by Louis D. Blum & Co.,special accountants to the former co-receiver, is the sum of $6,825.00 and that Louis D. Blum & Co. be, and it hereby is allowed the sum of $6,825.00 in full payment

for such services;

and it is further

ORDERED, that after payment of interest has been made to the customer

creditors of Tilney & Company as otherwise provided for herein, the receiver is authorized and directed to make the following payments as administrative allowances:

Name	Amount
Joseph C. Hogan	$ 43,560.00
I. Alan Harris	24,334.66
Wagner, Quillinan & Tennant	58,999.90
Hertz Herson & Company	62,226.77
Louis D. Blum & Co.	6,825.00
Total	$195,946.33

and it is further

ORDERED, that upon payment of interest as aforesaid, the receiver is authorized and directed to make an immediate pro-rata distribution of so much of the aforesaid administrative allowances as he deems advisable, pending further liquidation of this estate; and it is further

ORDERED, that leave is hereby granted to the receiver, counsel to the receiver and the accountants to the receiver to file affidavits with this court concerning

any further expenditure of time and expense in connection with the winding-up of this proceeding whenever such additional time or expense becomes ascertainable or capable of projection.

Dated: New York, New York
December 21, 1972.

David N. Edelstein
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

TILNEY & COMPANY,
FREDERICK TILNEY,

Defendants.

67 Civ. 4676

ORDER

At New York, in said District, this 21st day of December 1972.

The Receiver, by his attorneys, having duly moved for an order directing the Long Island National Bank to turn over to the Receiver all of the collateral remaining in the possession of said Bank after the liquidation of its loan with Governmental Statistical Corporation, and said motion having come on to be heard on the 14th day of December, 1972 pursuant to an order to show cause of this Court dated the 1st day of December, 1972, and upon such hearing the parties having placed on the record a stipulation providing for the sale of certain of the securities being held by said Bank and the delivery of the proceeds of such sales to the Receiver, and all parties to said stipulation having agreed and consented to same on the record; it is

ORDERED, that Long Island National Bank shall sell on December 28, 1972 the Alaska State Development Corporation note presently being held by it. Said bank will liquidate its

loan with Governmental Statistical Corporation and shall pay the balance of the proceeds of the sale of the Alaska State Development Corporationnote plus the cash balance remaining on hand with said Bank to the Receiver on December 28, 1972; and it is further

ORDERED, that the Long Island National Bank will, at the direction of the Receiver, deliver against payment 756 shares of Matanuska Valley Bank stock registered in the name of Tilney & Company and will remit the proceeds of such sale to the Receiver by December 28, 1972; and it is further

ORDERED, that Dorothy Tilney will pay to the Receiver the difference, if any, between the proceeds of sale of the aforesaid 756 shares of Matanuska Valley Bank and the sum of $27,216, the sum representing such difference, if any, to be paid to the Receiver by December 28, 1972; and it is further

ORDERED, that the Long Island National Bank, subject to the approval of its Loan Committee, shall lend to Dorothy Tilney the sum of $10,000 upon delivery to it as collateral for said loan 100 shares of Bank of Suffolk stock, the proceeds of said $10,000 loan to be paid directly to the Receiver by the Long Island National Bank not later than December 28, 1972; and it is further

ORDERED, that the Long Island National Bank shall continue to hold all remaining collateral presently held by it and not dealt with previously in this order until the aforesaid

payments have been made to the Receiver, or until the adjourned date of this motion and it shall not release or dispose of any such collateral prior to such time without written consent of the Receiver; and it is further

ORDERED, that this motion is adjourned until January 3, 1973 at 10:30 A.M.

Dated: New York, New York
December 28, 1972

/s/ DAVID N. EDELSTEIN
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

TILNEY & COMPANY, FREDERICK TILNEY,

Defendants.

67 Civ. 4676 D.N.E.

ORDER TO SHOW CAUSE

AT NEW YORK, IN THE SAID DISTRICT, THIS 11 DAY OF SEPT., 1973:

Upon the annexed affidavit of Robert F. Mulligan, sworn to the 7th day of September, 1973, the verified petition and final report and account of Joseph C. Hogan and I. Alan Harris sworn to the 31st day of July, 1973, and upon all other proceedings had herein:

Let the Securities and Exchange Commission, Frederick Tilney and any other interested party show cause before the Honorable David N. Edelstein, Chief Judge of this Court, in room 1306 of the United States Courthouse, Foley Square, in the borough of Manhattan, city of New York, on the 2d day of October 1973 at 11:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why the account of Joseph C. Hogan and I. Alan Harris, as receivers covering the period from December 18, 1967, through July 16, 1969, and the account of Joseph C. Hogan, as receiver from July 16, 1969 through March 31, 1973, as brought down to the date of July 31, 1973, should not be judicially settled and allowed; and why an order should not be made discharging Joseph C. Hogan and I. Alan Harris as receiver and former

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co-receiver and releasing their bond, approving the reimbursement of expenses and disbursements of Joseph C. Hogan as receiver, approving the reimbursement of expenses and disbursements of Wagner, Quillinan & Tennant, attorneys to the receiver, and directing payment of same, directing payment into the registry of this Court of funds earmarked for payment to creditors, fixing a bar date against the United States Internal Revenue Service, and directing that, to the extent they are not subject to restraining notices, the remaining assets of this estate be turned over to the defendants herein.

Sufficient reason appearing therefore, let service of a copy of this order and the annexed affidavit, petition and final report and account by regular mail upon the following parties at the respective addresses indicated, on or before 5:00 P.M. SEPT. 14, 1973, be deemed sufficient:

SECURITIES AND EXCHANGE COMMISSION
26 Federal Plaza
New York, New York 10007
Att.: Franklin Ormsten, Esq.

CADWALADER, WICKERSHAM & TAFT
Attorneys for Defendants
1 Wall Street
New York, New York 10005
Att.: Terence F. Gilheany, Esq.

SAXE, BACON & BOLAN
Attorneys for Dorothy M. Tilney
39 East 68th Street
New York, New York

JOHN H. DOYLE III
Guardian ad litem for
Dorothy C. Tilney
321 East 17th Street
New York, New York

HERTZ, HERSON & COMPANY
2 Park Avenue
New York, New York 10016
Att.: Mr. Jerry B. Klein

LOUIS D. BLUM & CO.
331 Madison Avenue
New York, New York 10017

Dated: Sept. 11, 1973
New York, N.Y.

Chief Judge, U. S. D. C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

[illegible] & COMPANY, FREDERICK TIMMY,

Defendants.

67 Civ. 4676 D.N.E.

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT F. MULLIGAN, being duly sworn, deposes and says:

1. That I am an attorney at law associated with the firm of Wagner, Quillinan & Tenmant, attorneys for Joseph C. Hogan, receiver of the assets of the above captioned defendants and as such I am fully familiar with all the facts and circumstances heretofore had herein.

2. That submitted herewith is the petition and final report and account of Joseph C. Hogan and I. Alan Harris, as receiver and former co-receiver, respectively, of the assets of the above captioned defendants, dated July 31, 1973.

3. That the aforementioned petition prays that the said account of Joseph C. Hogan and I. Alan Harris, as receivers, covering the period from December 18, 1967, through July 16, 1969, and the account of Joseph C. Hogan, as receiver, from July 16, 1969, through March 31, 1973, as brought down to the date of July 31, 1973, be judicially settled and allowed; that the aforesaid receiver and former

co-receiver be discharged; and that certain other relief be granted.

4. That this affidavit is made in support of a motion for an order to show cause why the relief sought in said petition should not be granted.

5. That application for an order to show cause is being made in order to obtain the quickest possible disposition of this matter since administrative costs are mounting daily and any delay might occasion additional expense.

6. No prior application for the relief sought herein has been made.

WHEREFORE, your deponent respectfully requests that the annexed order to show cause be signed and that an order be made granting the relief sought in the petition submitted herewith.

Robert F. Hathaway
ROBERT F. HATHAWAY

Sworn to before me this
7th day of September, 1973

Evelyn Suazo
Notary Public

EVELYN SUAZO
NOTARY PUBLIC, State of New York
No. 41-0243003
Qualified in Queens County
Commission Expires March 30, 1974

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff, 67 Civ. 4076 D. N. Y.

-against-

TILNEY & COMPANY, FREDERICK TILNEY,

Defendants.

PETITION

- x

TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of Joseph C. Hogan and I. Alan Harris respectfully states:

1) That they are the receiver and former co-receiver, respectively, of the assets of the above captioned defendants.

2) That attached hereto is a final report and verified account of your petitioners as such receivers.

3) That based upon said report and account, the purposes for which this receivership was instituted have been accomplished.

WHEREFORE, the petitioners pray that the verified account of Joseph C. Hogan and I. Alan Harris, as receivers, covering the period from December 18, 1967, through July 16, 1969, and the account of Joseph C. Hogan, as receiver, from July 16, 1969, through March 31, 1973, a-

brought down to the date of July 31 ,1973, be judicially settled and allowed; and that an order be made discharging your receiver and former co-receiver and releasing their bond, approving the reimbursement of expenses and disbursements of Joseph C. Hogan, as receiver, approving the reimbursement of expenses and disbursements of Wagner, Quillinan & Tennant, attorneys to the receiver, and directing payment of same, directing payment into the registry of this Court of funds earmarked for payment to creditors, fixing a bar date against the United States Internal Revenue Service, and directing that to the extent they are not subject to restraining notices, the remaining assets of this estate be turned over to the defendants herein.

(s) Joseph C. Hogan
Joseph C. Hogan

(s) I. Alan Harris
I. Alan Harris

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JOSEPH C. HOGAN, being duly sworn, deposes and says that he is the duly appointed and acting receiver of Tilney & Company and Frederick Tilney; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(s) Joseph C. Hogan
Joseph C. Hogan

Sworn to before me this
31st day of July, 1973.

(s) James P. Kelleher

JAMES P. KELLEHER
Notary Public, State of New York
(Seal) No. 31-7206351
Certificate filed in New York County
Commission Expires March 30, 1974

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

I. ALAN HARRIS, being duly sworn, deposes and says that he is the former co-receiver of Tilney & Company and Frederick Tilney; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(s) I. Alan Harris
I. Alan Harris

Sworn to before me this
31st day of July, 1973.

(s) Jay A. Wallman

JAY A. WALLMAN
Notary Public, State of New York
No. 60-9514625
Qualified in Westchester County
Commission Expires March 30, 1974

(Seal)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

TILNEY & COMPANY,
FREDERICK TILNEY,

Defendants.

67 Civ. 4676 D. N. E.

FINAL REPORT AND ACCOUNT

- x

TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK:

The report and account of Joseph C. Hogan as receiver and I. Alan Harris as former co-receiver of the assets of the above captioned defendants respectfully represents and shows:

1) That Joseph C. Hogan and I. Alan Harris were appointed receivers of the assets of Tilney & Company and Frederick Tilney by order of this Court dated December 18, 1967; that pursuant to the terms of said order the receivers filed with this Court a bond in the amount of $50,000.00; that I. Alan Harris resigned as receiver and said resignation was accepted by this Court by order dated July 16, 1969; and that from July 16, 1969 to the present, Joseph C. Hogan has been acting as sole receiver herein.

2) That the law firm of Wagner, Quillinan & Tennant was duly appointed as attorneys to the receivers and B. Bernard Creidinger & Company, predecessors to Horty, Horton & Company, was duly appointed as accountants to the

receivers.

3) That through the joint efforts of Joseph C. Hogan and I. Alan Harris, as receivers from December 18, 1967, through July 16, 1969; and through the efforts of Joseph C. Hogan, as sole receiver thereafter, the following services were performed for this Court:

The receivers took custody of the property, books and records of the defendants herein and liquidated the estate, except for certain assets which are set forth in the annexed schedules; they conducted an investigation of the claims of customer creditors and other creditors of the said defendants and, after hearings before this Court, paid 100 per cent of all creditors' claims approved by the Court and subsequently paid interest thereon at the rate of 6 per cent per annum as directed by this Court.

4) That allowances to the receiver, former co-receiver, and their aforementioned attorneys and accountants were approved by this Court and paid as set forth in the annexed exhibits and schedules.

5) That subsequent to March 31, 1973, the date of this account and on May 16, 1973, Joseph C. Hogan, as receiver, paid the sum of $[illegible].00 to himself, individually, as reimbursement for his expenses and disbursements herein, and that said expenses and disbursements were reasonable in amount and properly made.

6) That from December 31, 1971, through June 26, 1973, Wagner, Quillinan & Tennant, attorneys for the

receiver, paid a total of $215.58 in expenses and disbursements herein, that said expenses and disbursements were reasonable in amount and properly made, and that reimbursement therefor should be made to said attorneys.

7) That annexed hereto and made a part hereof are Exhibits A, B, C and D and accompanying supporting schedules which constitute the final account of Joseph C. Hogan and I. Alan Harris, as receivers, covering the period from December 18, 1967, through July 16, 1969, and Joseph C. Hogan, as receiver, from July 16, 1969, through March 31, 1973.

8) That also annexed hereto and made a part hereof is Exhibit E, which is a statement of all transactions made by Joseph C. Hogan, as receiver, from March 31, 1973, through July 31 , 1973, and which is intended to bring this account down to said date of July 31, 1973.

9) That as of the date hereof the purposes for which this receivership was instituted have been accomplished and there remains nothing further for the receiver and former co-receiver to do but ask the Court for an order:

a) Settling the account.

b) Discharging the receiver and former co-receiver and releasing them from their bond.

c) Approving the aforementioned reimbursement of expenses and disbursements of Joseph C. Hogan, receiver.

d) Approving the aforementioned reimbursement of expenses and disbursements of Wagner, Quillinan

& Tennant, attorneys to the receiver, and directing payment of same.

e) Directing payment into the registry of this Court of funds earmarked for payment to creditors which, because said creditors could not be located or for some other reason, remain unpaid.

f) Fixing a date beyond which the Internal Revenue Service would be barred from asserting any claim against the receiver or former co-receiver.

g) Directing that to the extent they are not subject to restraining notices, the remaining assets be turned over to the defendants herein.

Dated: New York, New York
July 31 , 1973.

Respectfully submitted,

(s) Joseph C. Hogan
Joseph C. Hogan

(s) I. Alan Harris
I. Alan Harris

JOSEPH C. HOGAN AND I. ALAN HARRIS, RECEIVERS FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

INDEX TO FINANCIAL EXHIBITS AND SCHEDULES
DECEMBER 18, 1967 TO MARCH 31, 1973*

* brought down to date as of July 31, 1973

EXHIBITS:

Summary of Assets and Liabilities:

Assets ..... A
Liabilities ..... B

Summary of Cash Receipts and Disbursements:

Cash Receipts..... C
Cash Disbursements..... D

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SUPPORTING SCHEDULES:

Securities..... A-1
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Administration Fees and Expenses D-3
Other Disbursements..... D-4
Payments on Creditors Claims:
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Taxes D-5 (4)
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Frederick Tilney -
Accounts Payable..... D-10 (4)
Dorothy Tilney D-11 (4)

INDEX TO FINANCIAL EXHIBITS AND SCHEDULES -- Continued
DECEMBER 18, 1967 TO MARCH 31, 1973

* brought down to date as of July 31, 1973

The foregoing enumerated exhibits and supporting schedules give effect to the financial operations of the equity receivership for the period December 18, 1967 to March 31, 1973. Joseph C. Hogan, Receiver, has served from inception and continues to serve in this capacity. I. Alan Harris, former Receiver, served from inception to July 16, 1969, the date of his resignation. Exhibit E contains supplemental transactions from March 31, 1973, through July 31, 1973.

EXHIBIT A

STATEMENT OF ASSETS
MARCH 31, 1973

	Total	Tilney & Company	Frederick Tilney
Cash - Manufacturers Hanover Trust Company.....	$ 1,071	$ 1,071	$ -
Securities (valued by Receiver at estimated conservative liquidating values)(Schedule A-1).	1,290	1,290	-
Residential property, Centre Island, N.Y., and certain adjacent lots (valued at appraised estimated liquidating value).....	152,000	-	152,000
Unimproved property, East Norwich, N.Y. (less mortgage held by Marine Midland Tinker National Bank).....	-	-	-
Land and building, Hicksville, N.Y. at cost (excludes real estate tax liens paid).....	38,466	38,466	-
Land - Seawanhaka Road, Centre Island, N.Y. - one-half interest (approximately 5.86 acres) - not presently valued	-	-	-
Cash value of life insurance, less loan principal and interest (Schedule A-2).....	5,165	3,051	2,114
Various assets not valued since amounts realizable are subject to recovery - principally sums due from affiliated companies (in excess of $500,000), fixed assets, miscellaneous receivables, etc.	-	-	-
Total Assets Presently Valued	$197,992	$43,878	$154,114

EXHIBIT B

STATEMENT OF LIABILITIES, MARCH 31, 1973

	Total	Tilney & Company	Frederick Tilney
Receivership Administration Liabilities:			
Joseph C. Hogan, Receiver - approved by court	$ 945	$ 945	$ -
Secured Creditors:			
Mortgage on residential property-Equitable Life Assurance Society of the U.S.	17,721	-	17,721
Unsecured Creditors:			
Unclaimed payment customer claim(Schedule B-1)	102	102	-
Unclaimed payments - interest on customer claims (Schedule B-1)	592	592	-
Customer accounts - no claim filed (Schedule B-2)	147	147	-
Accounts payable trade - no claim filed (Schedule B-3)	1,762	1,762	-
	2,603	2,603	-
Total Liabilities	$ 21,269	$ 3,548	$ 17,721
Mortgage liability-East Norwich,N.Y.(Note).	$ -	$ -	$ -
Tentative Excess of Assets Presently Valued Over Liabilities	$176,723	$40,330	$136,393
Total Liabilities and Tentative Excess of Assets Over Liabilities	$197,992	$43,878	$154,114

EXHIBIT B

Mortgage liability, East Norwich, N.Y.

The Receiver and Frederick Tilney, by court order dated July 8, 1970,executed a mortgage on certain undeveloped land in Norwich and East Norwich, N.Y. to Marine Midland Tinker National Bank in the amount of $115,828 with 7½% interest, in full payment and satisfaction of the bank's claim for loan principal of $98,000 plus accrued interest, which resulted from a 1966 loan to Frederick and Dorothy Tilney. The land was appraised at $103,500 and the bank paid to the Receiver $5,500 as further consideration for the mortgage. In the event that the assets of the receivership are insufficient to pay the full amount of all just claims against it (including administration expenses) the bank will pay to the Receiver an amount, which when subtracted from the sum of $103,500, will make the prorated value of the distribution received by the bank equal to the prorated share of each other creditor. The receivership is subject to terms and conditions as set forth in the mortgage agreement.

JOSEPH C. HOGAN AND I. ALAN HARRIS, RECEIVERS FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SUMMARY OF CASH RECEIPTS AND DISBURSEMENTS
DECEMBER 18, 1967 TO MARCH 31, 1973

EXHIBIT C

CASH RECEIPTS	DEC. 18, 1967 TO MAR. 31, 1973 Total	Tilney & Company	Frederick Tilney	DEC. 18, 1967 TO JULY 16, 1969 Total	Tilney & Company	Frederick Tilney	JULY 17, 1969 TO MARCH 31, 1973 Total	Tilney & Company	Frederick Tilney
Cash taken over by Receivers - December 18, 1967	$ 10,639	$ 10,639	$ -						
Proceeds from sales of securities (applied primarily in payment of bank loans) (Schedule C-1).....	1,019,994	945,357	74,637	$ 840,274	$ 780,043	$60,231	$ 179,720	$ 165,314	$14,406
Principal and interest recovered on 7½% sinking fund debentures of Governmental Statistical Corporation ($30,000 principal, $11,756 interest).....	41,756	41,756	-	41,756	41,756	-	-	-	-
Proceeds on resale of Waddington Bank stock, net of costs.....	35,680	35,680	-	-	-	-	35,680	35,680	-
Net proceeds of principal and interest from sale of Alaska State Development Corp. note, less $64,067 applied to Governmental Statistical Corporation loan at Long Island National Bank.....	32,544	32,544	-	-	-	-	32,544	32,544	-
Settlement of judgment claim - D. Raymond Kenney & Co.	85,000	85,000	-	85,000	85,000	-	-	-	-
Condemnation award proceeds - Governmental Statistical Corporation	939	939	-	-	-	-	939	939	-
Judgment proceeds from sheriff's auction sale of real estate of Governmental Statistical Corporation (Hicksville, N.Y.).....	35,103	35,103	-	-	-	-	35,103	35,103	-
Net proceeds from sale of Alaska real estate, as adjusted for closing costs.....	26,762	26,762	-	-	-	-	26,762	26,762	-
Sales and redemptions of U.S. Treasury obligations..	1,157,195	1,157,195	-	-	-	-	1,157,195	1,157,195	-
Certificates of deposit redeemed	495,000	495,000	-	-	-	-	495,000	495,000	-
Interest incurred on bank loans added to cash ..... and loan balance.....	5,990	5,990	-	5,990	5,990	-	-	-	-
Consideration received from Marine Midland Tinker National Bank for granting mortgage on East Norwich property.....	5,500	-	5,500	-	-	-	5,500	-	5,500
Release of cash held in escrow by Long Island National Bank under collateral loan agreement (against loan to Governmental Statistical Corporation) (contra-disbursements).....	33,539	33,539	-	-	-	-	33,539	33,539	-

EXHIBIT C

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CASH RECEIPTS (Cont'd.):	DECEMBER 18, 1967 TO MAR. 31, 1973 Total	Tilney & Company	Frederick Tilney	DEC. 18, 1967 TO JULY 16, 1969 Total	Tilney & Company	Frederick Tilney	JULY 17, 1969 TO MARCH 31, 1973 Total	Tilney & Company	Frederick Tilney
Life insurance policy loans against cash values.	$ 27,211	$ 9,500	$17,711	$ -	$ -	$ -	$ 27,211	$ 9,500	$17,711
Gross dividends received from National Bank of Alaska on Central Alaska Utilities, Inc. stock (before reduction of offset for Frederick Tilney loan principal of $1,000 and interest $242)	3,450	-	3,450	-	-	-	3,450	-	3,450
Interest and dividends earned (Schedule C-3)	99,501	97,430	2,071	30,853	30,713	140	68,648	66,717	1,931
Accumulated life insurance dividends	1,769	-	1,769	1,769	-	1,769	-	-	-
Proceeds - note receivable of Richard Michaels	1,000	-	1,000	-	-	-	1,000	-	1,000
Advance from Dorothy Tilney	10,000	10,000	-	-	-	-	10,000	10,000	-
Other receipts (Schedule C-2)	3,618	3,618	-	3,431	3,431	-	187	187	-
Total Cash Receipts	3,121,551	3,015,413	106,138	1,009,073	946,933	62,140	2,112,478	2,068,480	43,998

CASH DISBURSEMENTS:

EXHIBIT C

EXHIBIT D

Payment of creditor claims (Schedules D-5 to D-11)	265,626	249,446	16,180	-	-	-	265,626	249,446	16,180
Interest paid on security business customer claims (Schedule D-8)	38,761	38,761	-	-	-	-	38,761	38,761	-
Payment of bank loans from proceeds of sale of securities	668,365	640,892	27,473	668,365	640,892	27,473	-	-	-
Payment of bank loans from proceeds received on redemption of Governmental Statistical Corporation 7½% sinking fund debentures - principal and interest	40,519	40,519	-	40,519	40,519	-	-	-	-
Proceeds of security sales applied by Long Island National Bank in escrow against collateralized loan to Governmental Statistical Corporation (contra-receipts)	33,539	33,539	-	33,539	33,539	-	-	-	-
Purchase - U.S. Treasury obligations	1,155,113	1,155,113	-	-	-	-	1,155,113	1,155,113	-
Purchase - certificates of deposit	495,000	495,000	-	-	-	-	495,000	495,000	-
Reacquisition of Waddington Bank stock, pursuant to court order	39,323	39,323	-	-	-	-	39,323	39,323	-
Purchase of Anchorage Alaska real estate on foreclosure sale	14,020	14,020	-	14,020	14,020	-	-	-	-

CASH DISBURSEMENTS (Cont'd.):	DECEMBER 18, 1967 TO MAR. 31, 1973			DEC. 18, 1967 TO JULY 16, 1969			JULY 17, 1969 TO MARCH 31, 1973		
	Total	Tilney & Company	Frederick Tilney	Total	Tilney & Company	Frederick Tilney	Total	Tilney & Company	Frederick Tilney
Settlement of lawsuit - City of Nome, Alaska	$ 20,000	$ 20,000	$ -	$ 20,000	$ 20,000	$ -	$ -	$ -	$ -
Purchase of Hicksville, N.Y. property on foreclosure sale	38,466	38,466	-	-	-	-	38,466	38,466	-
Payment of National Bank of Alaska loan principal and interest (see receipts)	1,242	-	1,242	-	-	-	1,242	-	1,242
Advances - Dorothy Tilney	689	689	-	689	689	-	-	-	-
Advance to Governmental Statistical Corporation	1,000	1,000	-	1,000	1,000	-	-	-	-
Receivership expenses and costs - Tilney & Company (Schedule D-1)	50,762	50,762	-	13,075	13,075	-	37,687	37,687	-
Receivership expenses and costs - Frederick Tilney (Schedule D-2)	65,557	-	65,557	17,447	-	17,447	48,110	-	48,110
Administration fees and expenses (Schedule D-3)	201,770	201,770	-	-	-	-	201,770	201,770	-
Other disbursements (Schedule D-4)	1,367	1,337	30	1,328	1,298	30	39	39	-
Total Cash Disbursements	3,131,119	3,020,637	110,482	809,982	761,349	48,633	2,321,137	2,259,288	61,849
Cash Balance - March 31, 1973	$ 1,071								

The foregoing cash receipts (Exhibit C) and cash disbursements (Exhibit D) give effect substantially to classification as between the Receivers transactions for Tilney & Company and Frederick Tilney, except for administration fees and expenses, which are not allocated in Exhibit D. Such expenses are reflected in total and in columns designated for Tilney & Company, However, the actual cash has been accounted for on a joint basis through combined depositories during the administration period.

The cash receipts and disbursements also exclude certain transactions reflected in bank accounts of Frederick Tilney and joint bank accounts of Frederick and Dorothy Tilney subsequent to December 18, 1967, to which the Receivers did not have possession or control.

Appendix Notes

To conserve space in the appendix, Exhibits C and D have been prepared and reduced under a single heading, "Summary of Cash Receipts and Disbursements".

EXHIBIT D

EXHIBIT E

SUPPLEMENTAL TRANSACTIONS
APRIL 1, 1973 to JULY 31, 1973

Cash - Manufacturers Hanover Trust Company - March 31, 1973.....		$1,071
Cash Receipts:		
Proceeds from sale of 41 shares Matanuska Valley Bank stock...		1,353
		2,424
Cash Disbursements:		
Joseph C. Hogan, Receiver - balance owing on approved fees and expenses.....	$945	
Robert Blackie - Receiver's surety.....	200	1,145
Cash - Manufacturers Hanover Trust Company - July 31, 1973.....		$1,279

EXHIBIT E

SCHEDULE A-1

SCHEDULE OF SECURITIES, MARCH 31, 1973

Number of Shares or Face Amount	Description	Tilney & Company(1)
Securities on Hand		
6,509	Central Alaska Utilities, Inc. (formerly Spenard Utilites)	$ -
25	Life Insurance Securities Corporation	-
10	Alaska Airlines	60
41	Matanuska Valley Bank (4)	1,230
380	Long Island Commercial Review	-
200	Lithium Corp. Canada (held by Francis I. Dupont & Co.) - worthless	-
Securities and Notes Held by Long Island National Bank (2)		
$59,000	Governmental Statistical Corporation notes (to Tilney & Co.)	-
320	Matanuska Valley Bank (3) (5) (registered in name of Frederick and Dorothy Tilney)	-
		$1,290

(1) Security valuations stated were furnished by the Receiver at conservative estimated liquidating valuesand exclude values applicable to securities claimed by others. Values for certain securities were unavailable.

(2) Securities and notes are held pursuant to court order.

(3) No values assigned by Receiver as securities are subject to claim to ownership by Dorothy Tilney.

(4) Represents 5% stock dividend received in prior year (apparently related to part of shares held by Long Island National Bank) - ownership to approximately 3 shares may be claimed by Dorothy Tilney. Shares received on dividend distribution are subject to verification.

(5) Long Island National Bank did not confirm receipt of shares under 5% stock dividend paid by Matanuska Valley Bank in prior year (see item 4).

OTHER SECURITIES - NOT PRESENTLY VALUED

Note drawn by Tilney Construction Corp., Inc. to Frederick Tilney, dated 3/15/68, due one year, 7 1/2% interest.....	$58,387.90
Note drawn by Governmental Statistical Corporation to Frederick Tilney, dated 5/16/66, due 30 days.....	25,000.00
Stock Registered in Name of Frederick Tilney:	
Tilney Construction Corp., Inc. - Certificate #7.....	74 shares
Tilney & Company, Inc. - Certificate #1	90 shares
First Long Island Corporation - Certificate #1.....	10 shares

SCHEDULE A-1

SCHEDULE A-2

SCHEDULE OF LIFE INSURANCE POLICY VALUES, MARCH 31, 1973

Insurance Company	Policy Number	Life Covered	Owner of Policy	Beneficiary
The Equitable Life Insurance Society of the United States	62 314 638	Frederick Tilney	Receivers (1)	Dorothy M. Tilney
Aetna Life and Casualty Co.	P 814 654	Frederick Tilney	Frederick Tilney	Charles M. Fanoni (2)
New England Mutual Life Insurance Co.	2 214 918	Dorothy McCabe Tilney	Tilney & Company	Tilney & Company
Massachusetts Mutual Life Insurance Co.	2 465 410	Frederick Tilney	Tilney & Company	Tilney & Company

Insurance Company	Cash Surrender Value	Accumulated Dividends	Loans and Interest Payable	NET CASH VALUE Total	Tilney & Company	Frederick Tilney
Equitable	$15,060	$ 3,140	$18,155	$ 45	$ --	$ 45
Aetna	1,752	1,445	1,128	2,069	--	2,069
New England	15,312	6,409	19,893	1,828	1,828	--
Massachusetts	18,841	5,566	23,184	1,223	1,223	--
	$50,965	$16,560	$62,360	$5,165	$3,051	$2,114

SCHEDULE A-2

(1) Policy was assigned to I. Alan Harris and Joseph C. Hogan, Receivers, by Dorothy M. Tilney.

(2) Subject to change upon instructions to insurance company.

SCHEDULE B-1

UNCLAIMED PAYMENTS AND INTEREST ON CUSTOMER CLAIMS
MARCH 31, 1973

	Customer Claim	Interest	Total
Walter Clark	$102.40	$ 22.20	$124.60
Lawrence Saunders	-	336.19	336.19
Franklin E. Campbell	-	135.13	135.13
Walter Teeuwen	-	98.92	98.92
	$102.40	$592.44	$694.84

Note: The foregoing excludes unclaimed dividends aggregating $1,105 to customers whose claims have otherwise been satisfied.

SCHEDULE B-1

SCHEDULE B-2

SCHEDULE OF LIABILITIES TO SECURITY BUSINESS CUSTOMERS - NO CLAIMS FILED
MARCH 31, 1973

This schedule comprised 19 names of liabilities due security business customers who did not file claims. The total amount due is $146.51.

SCHEDULE B-2

SCHEDULE B-3

SCHEDULE OF ACCOUNTS PAYABLE TRADE - NO CLAIMS FILED
MARCH 31, 1973

	Amount Per Books
Appeal Printing Company, 130 Cedar St., New York, N. Y.	$ 26.25
City of Anchorage P.O. Box 400, Anchorage, Alaska	32.28
Daytimers	9.66
Prudden's Digest of Investment P. O. Box 957, New York, N.Y.	50.00
Standard & Poors 345 Hudson St., New York, New York	20.10
Wall Street Journal 30 Broad St., New York, New York	26.00
Westley Associates Anchorage, Alaska	116.52
Friden, Inc. 2350 Washington Ave., Hicksville, N. Y.	12.34
Journal of Commerce 99 Wall St., New York, New York	32.00
Merrill, Lynch, Pierce, Fenner & Smith, Inc. 70 Pine St. New York, N. Y.	4.76
Moody's Investors Service 99 Church St., New York, N. Y.	319.20
National Quotation Service 46 Front St., New York, N. Y.	607.95
Xerox Corporation Rochester, New York	504.81
Total	$1,761.87

SCHEDULE B-3

JOSEPH C. HOGAN AND I. ALAN HARRIS, RECEIVERS FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SCHEDULE OF SECURITY SALES
DECEMBER 18, 1967 TO MARCH 31, 1973

Month Proceeds Received	Description of Security	Total Proceeds	TILNEY & COMPANY Number of Shares or Face Value	TILNEY & COMPANY Proceeds	FREDERICK TILNEY Number of Shares or Face Value	FREDERICK TILNEY Proceeds
Dec. 1967	Valley National Bank of Long Island	$ 24	-	$ -	Fractions	$ 24
Jan. 1968	Bank of Suffolk County	19,390	-	-	194	19,390
" "	Long Island National Bank	2,098	-	-	101	2,098
" "	Bank of Suffolk County	37,485	375	37,485	-	-
" "	Bank of Suffolk County	111,076	1,104	111,076	-	-
Feb. 1968	Long Island National Bank	1,925	89	1,847	4	78
" "	First National Bank of Yonkers	869	52	869	-	-
" "	Valley National Bank of Long Island	88	-	-	3	88
" "	" " " " "	501	28	501	-	-
Mar. 1968	Bank of Babylon	587	21	587	-	-
" "	First National Bank of Anchorage	8,000	10	8,000	-	-
" "	First National Bank of East Islip	1,462	48	1,462	-	-
" "	Alaska State Bank	9,600	200	9,600	-	-
" "	National Bank of Alaska	4,680	78	4,680	-	-
" "	Bank of Westbury	1,220	61	1,220	-	-
" "	Bankers Trust Company	61	1	61	-	-
" "	Bank of Babylon	1,202	43	1,202	-	-
" "	National Bank of Alaska	3,060	51	3,060	-	-
" "	Victoria Algoma	9	-	-	50	9
" "	Parma, N.Y. CSD #1, 3.60% due 12/1/93	75,785	$100,000	75,785	-	-
" "	Kodiak, Alaska, 3.875% due 3/1/84	20,000	$ 25,000	20,000	-	-
" "	Anaconda Copper	416	10	416	-	-
" "	Cessna Aircraft	440	10	440	-	-
" "	Chrysler Corp.	432	8	432	-	-
" "	Cities Service	449	10	449	-	-
" "	Communications Sattelite	460	10	460	-	-
" "	Federal Pacific Electric	223	10	223	-	-
" "	Newmount Mining	576	10	576	-	-
" "	Scott Paper Company	338	15	338	-	-
" "	Valley National Bank	235	-	-	8	235
" "	Bank of Westbury Trust	40	-	-	1	40
" "	Bank of Babylon	5,870	-	-	210	5,870
" "	National Bank of Alaska	600	-	-	10	600
Apr. 1968	City of Fairbanks, 4.80% due 1/1/73	1,840	$ 2,000	1,840	-	-
" "	Alaska State Development Corp., 3.90% due 8/1/77	24,713	$ 30,000	24,713	-	-
" "	Alaska State Development Corp., 3.50% due 8/1/69	19,325	$ 20,000	19,325	-	-
" "	Alaska State Development Corp., 3.50% due 8/1/70	70,500	$ 75,000	70,500	-	-
" "	Fairbanks, Alaska, 6.00% due 1/1/74	19,600	$ 20,000	19,600	-	-
" "	Fairbanks, Alaska, 5.00% due 1/1/80	26,700	$ 30,000	26,700	-	-
" "	Fairbanks, Alaska, 5.00% due 1/1/86	34,600	$ 40,000	34,600	-	-

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JOSEPH C. HOGAN AND I. ALAN HARRIS, RECEIVERS FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

SCHEDULE OF SECURITY SALES
DECEMBER 18, 1967 TO MARCH 31, 1973

Month Proceeds Received	Description of Security	Total Proceeds	TILNEY & COMPANY Number of Shares or Face Value	TILNEY & COMPANY Proceeds	FREDERICK TILNEY Number of Shares or Face Value	FREDERICK TILNEY Proceeds
Apr. 1968	Advisors Fund	$ 32	-	$ -	4	$ 32
May 1968	Alaska State Development Corp., 3.50%	13,969	$ 15,000	13,969	-	-
" "	Western Airlines	2,291	92.5	2,291	-	-
" "	Alaska State Development Corp., 4.80% due 8/1/83	3,700	$ 5,000	3,700	-	-
" "	National Bank of East Islip	3,569	117	3,569	-	-
June 1968	Motinecock Bank	121,017	5,076	101,266	990	19,751
Aug. 1968	Anaconda Copper	441	10	441	-	-
" "	Waddington Bank	39,323	786.67	39,323	-	-
Nov. 1968	Cities Service	540	10	540	-	-
" "	Airlift International	218	10	218	-	-
" "	Alaska State Bank	137,949	3,225	126,093	304	11,856
" "	Western Airlines	192	1	32	5	160
Mar. 1969	City Commerce Corp.	850	4,500	850	-	-
June 1969	City Commerce Corp.	9,525	25,000	9,525	-	-
" "	Steadman Industries	179	14.372	179	-	-
	December 18, 1967 to July 16, 1969	840,274		780,043		60,231
Aug. 1969	Florida Capital Corp.	733	100	733	-	-
Jan. 1970	Matanuska Valley Bank	43,500	1,500	43,500	-	-
Mar. 1970	City Commerce Corp.	2,350	5,000	2,350	-	-
Apr. 1970	City Commerce	2,347	5,000	2,347	-	-
June 1970	City Commerce Corp.	9,400	20,000	9,400	-	-
" "	Alaska State Bank	11,969	220	11,969	-	-
July "	Alaska Airlines, Inc.	27	5	27	-	-
" "	City Commerce Corp.	6,705	15,000	6,705	-	-
Oct. "	Marine Midland Bank	13,458	-	-	379	13,458
Nov. "	Alaska Bancshares, Inc.	1,211	2,107	1,211	-	-
" "	Matanuska Valley Bank	17,973	947.8	17,973	-	-
Dec. "	City Commerce Corp., 7% Debentures	41,883	$ 55,884	41,883	-	-
" "	Matanuska Valley Bank	948	-	-	50	948
Jan. 1973	Matanuska Valley Bank	27,216	756	27,216	-	-
	July 17, 1969 to March 31, 1973	179,720		165,314		14,406
	Total	$1,019,994		$945,357		$ 74,637

The foregoing includes sales by banks under various loan agreements.

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SCHEDULE C-2

OTHER RECEIPTS
DECEMBER 18, 1967 TO MARCH 31, 1973

	Total	12/18/67 to 7/16/69	7/17/69 to 3/31/73
Reimbursement - legal costs, Nome, Alaska...	$ 900	$ 900	$ -
Blyth & Company.....	172	172	-
Reimbursement of expenses.....	1,422	1,422	-
State of Alaska - court system.....	347	347	-
Proceeds sale of fixed assets (Governmental Statistical Corporation).....	539	539	-
New York Telephone Company refund	163	-	163
Insurance proceeds.....	24	-	24
Refund of various miscellaneous expenses....	51	51	-
	$3,618	$3,431	$187

JOSEPH C. HOGAN AND I. ALAN HARRIS, RECEIVERS FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

INTEREST AND DIVIDENDS EARNED
DECEMBER 18, 1967 TO MARCH 31, 1973

Description	Total	TILNEY & COMPANY Receivers Interest on Short-Term Investments and Deposits	TILNEY & COMPANY Interest	TILNEY & COMPANY Dividends	FREDERICK TILNEY Dividends
December 18, 1967 to October 31, 1968:					
$ 25,000 Kodiak, Alaska, 3.875% due 3/1/84	$ 1,044.10	$ -	$ 1,044.10	$ -	$ -
$ 2,000 City of Fairbanks, 4.80% due 1/1/73	72.80	-	72.80	-	-
$ 5,000 Alaska State Development Corp., 4.80% due 8/1/83	184.67	-	184.67	-	-
$ 30,000 Alaska State Development Corp., 3.90% due 8/1/77	780.00	-	780.00	-	-
$ 15,000 Alaska State Development Corp., 3.50% due 8/1/79	402.50	-	402.50	-	-
$ 20,000 Alaska State Development Corp., 3.50% due 8/1/69	466.67	-	466.67	-	-
$ 75,000 Alaska State Development Corp., 3.50% due 8/1/70	1,808.33	-	1,808.33	-	-
$ 40,000 Fairbanks, Alaska, 5% due 1/1/86	1,516.67	-	1,516.67	-	-
$ 20,000 Fairbanks, Alaska, 6% due 1/1/74	910.00	-	910.00	-	-
$ 30,000 Fairbanks, Alaska, 5% due 1/1/80	1,137.50	-	1,137.50	-	-
$100,000 Parma, Alaska, 3.60% due 12/1/93	2,980.00	-	2,980.00	-	-
Other interest on bonds credited by Franklin National Bank, which is unidentified	391.82	-	391.82	-	-
City Commerce Corporation, 7% Debentures	3,909.08	-	3,909.08	-	-
Certificate of deposit	92.06	-	92.06	-	-
Time deposits	1,511.45	1,511.45	-	-	-
John H. Stevenson (customer accounts receivable)	35.00	-	35.00	-	-
Alaska State Bank	2,125.80	-	-	2,123.40	2.40
Bank of Babylon	38.40	-	-	38.40	-
Bank of Westbury	190.50	-	-	190.50	-
Bankers Trust Company	.65	-	-	.65	-
Ben Daniels (return of dividend paid in error to receivership)	78.00	-	-	78.00	-
First National Bank of Anchorage	50.00	-	-	50.00	-
First National Bank of East Islip	66.80	-	-	66.00	.80
Matinecock Bank	667.57	-	-	654.77	12.80
National Bank of Alaska	45.87	-	-	32.34	13.53
National Bank of Yonkers	10.40	-	-	10.20	.20
Newmont Mining	22.00	-	-	22.00	-
Pan American Airways	.20	-	-	.20	-
Scott Paper	15.00	-	-	15.00	-
Steadman Industries	4.89	-	-	4.89	-
Valley National Bank	23.10	-	-	22.50	.60
Cities Service	28.50	-	-	28.50	-
Western Airlines	.25	-	-	.25	-
Chrysler Corp	16.00	-	-	16.00	-
Anaconda Copper	42.50	-	-	42.50	-
Tinker National Bank	25.00	-	-	-	25.00
Miscellaneous	84.98	-	-	.70	84.28
	20,779.06	1,511.45	15,731.20	3,396.80	139.61

JOSEPH C. HOGAN AND I. ALAN HARRIS, RECEIVERS FOR
TILNEY & COMPANY (A PARTNERSHIP) AND
FREDERICK TILNEY (AN INDIVIDUAL)

INTEREST AND DIVIDENDS EARNED
DECEMBER 18, 1967 TO MARCH 31, 1973

Description	Total	TILNEY & COMPANY Receivers Interest on Short-Term Investments and Deposits	TILNEY & COMPANY Interest	TILNEY & COMPANY Dividends	FREDERICK TILNEY Dividends
November 1, 1968 to July 16, 1969:					
Time deposits	$ 2,257.28	$2,257.28	$ -	$ -	$ -
Certificate of deposit	5,609.76	5,609.76	-	-	-
City Commerce Corporation, 7% Debentures	1,954.54	-	1,954.54	-	-
Steadman Industries	1.87	-	-	1.87	-
Alaska State Bank	132.00	-	-	132.00	-
Pan American Airways	20	-	-	.20	-
Western Airlines	.50	-	-	.50	-
Miscellaneous	117.15	-	-	117.15	-
	10,073.30	7,867.04	1,954.54	251.72	-
Total - December 18, 1967 to July 16, 1969	30,852.36	9,378.49	17,685.74	3,648.52	139.61
July 17, 1969 to October 31, 1969:					
U.S. Treasury obligations	4,617.55	4,617.55	-	-	-
November 1, 1969 to October 31, 1970:					
U.S. Treasury obligations	16,908.78	16,908.78	-	-	-
City Commerce Corporation, 7% Debentures	3,909.08	-	3,909.08	-	-
Matanuska Valley Bank	318.95	-	-	318.95	-
Alaska State Bank	132.00	-	-	132.00	-
Marine Midland Tinker National Bank	955.19	-	-	-	955.19
	22,224.00	16,908.78	3,909.08	450.95	955.19
November 1, 1970 to October 31, 1971:					
U.S. Treasury obligations	27,558.92	27,558.92	-	-	-
Certificates of deposit	2,815.32	2,815.32			
Matanuska Valley Bank	252.55	-	-	252.55	-
Miscellaneous	2.45	-	2.45	-	-
	30,629.24	30,374.24	2.45	252.55	-
November 1, 1971 to October 31, 1972:					
U.S. Treasury obligations	3,658.16	3,658.16	-	-	-
Certificates of deposit	2,858.23	2,858.23	-	-	-
Central Alaska Utilities, Inc	976.35	-	-	-	976.35
	7,492.74	6,516.39	-	-	976.35
November 1, 1972 to March 31, 1973:					
U.S. Treasury obligations	2,233.15	2,233.15	-	-	-
Certificates of deposit	995.90	995.90	-	-	-
Time deposits	456.32	456.32	-	-	-
	3,685.37	3,685.37	-	-	-
Total - July 17, 1969 to March 31, 1973	68,648.90	62,102.33	3,911.53	703.50	1,931.54
Total - December 18, 1967 to March 31, 1973	$99,501.26	$71,480.82	$21,597.27	$4,352.02	$2,071.15

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SCHEDULE D-1

RECEIVERSHIP EXPENSES AND COSTS - TILNEY & COMPANY
DECEMBER 18, 1967 TO MARCH 31, 1973

	Total	12/18/67 to 7/16/69	7/17/69 to 3/31/73
Real estate taxes*	$20,745	$ -	$20,745
Life insurance premiums	16,530	4,502	12,028
Travel expense - Alaska	2,257	2,257	-
Rent	2,668	530	2,138
Travel expense - George Brown	356	356	-
Commissions - George Brown	500	500	-
Legal fees	2,405	1,711	694
Appraisal fees	1,850	1,000	850
Surety bond	800	400	400
Telephone	1,131	1,131	-
Insurance	594	-	594
Moving expense	503	408	95
Notice to creditors	240	210	30
New York City commercial rent and occupancy tax	103	-	103
Stationery	38	38	-
Photocopy - Louis Blum & Co.	32	32	-
New York State transfer tax	10	-	10
Total	$50,762	$13,075	$37,687

* Includes real estate tax liens paid for periods prior to acquisition of Governmental Statistical Corporation property bought in on Sheriff's sale.

SCHEDULE D-2

RECEIVERSHIP EXPENSES AND COSTS - FREDERICK TILNEY
DECEMBER 18, 1967 TO MARCH 31, 1973

	Total	12/18/67 to 7/16/69	7/17/69 to 3/31/73
Personal mortgage and life insurance	$32,131	$ 9,897	$22,234
Real estate taxes and water charges	26,506	5,761	20,745
Fuel oil	3,378	776	2,602
Homeowner's insurance	2,995	663	2,332
Federal income taxes	197	-	197
Advance to Frederick Tilney	350	350	-
	$65,557	$17,447	$48,110

SCHEDULE D-2

SCHEDULE D-3

ADMINISTRATION FEES AND EXPENSES
DECEMBER 18, 1967 TO MARCH 31, 1973

	Total	Fees	Expenses
Administration Fees and Expenses Paid:			
Joseph C. Hogan, Receiver....	$44,115.00	$43,560.00	$ 555.00
I. Alan Harris, Former Receiver.....	24,334.65	23,800.00	534.65
Wagner, Quillinan & Tennant, Attorneys to Receivers.....	58,999.90	55,660.00	3,339.90
Hertz, Herson & Company, Accountants to Receivers....	62,226.77	61,552.00	674.77
Louis D. Blum & Company, Accountants.....	6,825.00	6,825.00	-
Arnold Bauman, Guardian Ad Litem of Dorothy C.Tilney...	5,268.70	5,000.00	268.70
	$201,770.02	$196,397.00	$5,373.02
Administration Fees and Expenses Payable:			
Joseph C. Hogan, Receiver...	$ 945.00	-	945.00

Note: As of March 31, 1973 all administrative fees and expenses had been paid with the exception of $945.00 due to Joseph C. Hogan, Receiver. This amount was paid on May 10, 1973.

SCHEDULE D-3

SCHEDULE D-4

OTHER DISBURSEMENTS
DECEMBER 18, 1967 TO MARCH 31, 1973

	Total	12/18/67 to 7/16/69	7/17/69 to 3/31/73
Checks issued by G. Brown, former employee, chargeable to Governmental Statistical Corporation after appointment of Receivers	$1,010	$1,010	$ -
Blyth & Company	172	172	-
Bank charges	83	83	-
Various miscellaneous expenses	72	33	39
Total - Tilney & Company	1,337	1,298	39
Various miscellaneous expenses - Frederick Tilney	30	30	-
Total	$1,367	$1,328	$ 39

SCHEDULE D-4

CREDITOR CLAIMS PAID
DECEMBER 18, 1967 TO MARCH 31, 1973

	Total	Tilney & Company	Frederick Tilney
Taxes Payable Prior to Receivership (Schedule D-5).....	$ 3,258.83	$ 3,258.83	$ -
Security Brokers and Dealers (Schedule D-6).....	4,453.01	4,453.01	-
Banks (Schedule D-7).....	13,648.38	13,648.38	-
Customer Accounts and Interest Thereon (Schedule D-8).....	183,186.34	183,186.34	-
Accounts Payable - Tilney & Company (Schedule D-9)	44,875.46	44,875.46	-
Accounts Payable - Frederick Tilney (Schedule D-10).....	13,202.40	-	13,202.40
Dorothy Tilney (Schedule D-11)..	3,001.75	24.00	2,977.75
	$265,626.17	$249,446.02	$16,180.15

SCHEDULES OF CLAIMS PAID
DECEMBER 18, 1967 TO MARCH 31, 1973

SCHEDULE D-5
TAXES PAYABLE PRIOR TO RECEIVERSHIP - TILNEY & COMPANY

Claim Number	Name and Address	Amount
84	State Tax Commission	$ 207.11
190	City of New York - Department of Finance	337.28
148	New York State Department of Labor	345.60
158	Internal Revenue Service	2,368.84
		$3,258.83

SCHEDULE D-6
SECURITY BROKERS AND DEALERS - TILNEY & COMPANY

110	Francis I. DuPont & Co.	$1,527.61
170	Edwin L. Tatro Company	2,925.40
		$4,453.01

SCHEDULE D-7
BANKS

115	Franklin National Bank	$2,949.89
99	First National City Bank	10,698.49
		$13,648.38

SCHEDULE OF CUSTOMER CLAIMS PAID AND INTEREST THEREON
DECEMBER 18, 1967 TO MARCH 31, 1973

Claim Number	Name and Address	Amount	Interest Paid
5	Jose M. Romano 1451 Richardson Vista Road Anchorage, Alaska	$ 652.50	$ 141.46
7	Horst Beitter 1646 Bartlett Drive Anchorage, Alaska	496.29	107.60
12	Rachel V. Robertson Box 520, Apt. 385 Anchorage, Alaska 99501	668.94	145.03
13	Frances K. and Alfred B. Roney Route 5 Laurel, Mississippi 39440	820.00	177.78
19	Albert Edward Bennett A/C/F Michael Bennett, Minor 1091 26th Avenue Anchorage, Alaska 99503	1,100.01	238.48
20	Albert Edward and Murray Evelyn Bennett 1091 26th Avenue Anchorage, Alaska 99503	1,132.00	245.41
21	Frank R. and Marie J. Foley Box 66 Mill City, Oregon	2,066.75	448.07
22	George G. Brooks 5437 Ketchikan Street El Paso, Texas	1,230.85	266.82
24	Thomas R. Marshall, Jr. 1569 Birchwood Street Anchorage, Alaska	2,531.25	548.77
25	Kenneth Fox 721 East 21st Street San Bernardino, California	1,687.25	365.80

SCHEDULE D-8
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(Continued)

Claim Number	Name and Address	Amount	Interest Paid
28	Faye E. and Nancy Troy 433-A Seventh Street Fort Richardson, Alaska 99505	$ 504.00	$ 109.27
29	Charles and Lucille Hardenbrook 14015 15th Avenue, N.E. Seattle, Washington	2,587.50	560.97
31	Morris H. and Orlean L. Nelson 1136 11th Avenue Anchorage, Alaska	375.00	81.30
33	Allan W. Alvin 4800 Cambridge Way Spenard, Alaska	1,994.88	432.49

SCHEDULE D-8
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37	Ralph P. DeVillbiss Star Rt. Box L 1150 Palmer, Alaska	3,780.25	819.56
38	James M. and Kathleen P. Balistreri c/o Struthers & Crew Southland Professional Building Hayward, California	817.13	177.15
39	Clement Eugene and Joanne Mary Gill R. R. #3 Wyoming, Illinois	891.38	193.25
40	John K. Bishop Box 6514 Annex Anchorage, Alaska 99502	1,154.10	250.21
41	James J. Goodfellow 206 Bunnell Street Anchorage, Alaska 99504	461.00	99.94
42	Palmer Peterson 1000 E. 10th Street Anchorage, Alaska Mailing Address: Box 4-2133 Spenard, Alaska 99503	190.00	41.19

Claim Number	Name and Address	Amount	Interest Paid
44	Charles W. Boohar, Jr. 1287C Spencer Avenue Lancaster, Pennsylvania	$1,532.00	$ 332.14
45	Kenneth and Ruth E. Rountree 116 East Manor Avenue Anchorage, Alaska	1,267.75	274.85
47	William H. and Kathleen C. Radentz 9222 N. Dixie Highway, Radcliff, Kentucky	3,281.94	711.52
48	Jean M. Rietze 5901 East 6th Sp. 51, Anchorage, Alaska 99504	3,954.75	857.39
49	Daniel W. Rietze 5901 East 6th Sp. 51 Anchorage, Alaska 99504	3,521.15	763.39
50	Gerald E. and Jacqueline N. Watkins 3023 Norma Drive Garland, Texas 75040	1,010.50	219.08
52	Harry Schiwy 434 East 10th Avenue, Apt. 2 Anchorage, Alaska 99501	1,133.00	245.63
53	Joseph P. and Cynthia L. Steiner 5837 Colfax South Minneapolis, Minnesota 55419	905.50	196.31

SCHEDULE D-8
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54	Roland and Ellen Willequer 128 Cascade Drive Belleville, Illinois	900.00	195.12
55	Mr. Jerry L. Winn 325 L Street Anchorage, Alaska 99501	6,001.50	1,301.13
56	John M. and Carol N. Banta Route 5, Bluff Mountain Sevierville, Tennessee 37862	1,972.88	427.72
57	Merle E. Williams 2060 20th Street, N.W. Cedar Rapids, Iowa 52405	1,341.25	290.78

Claim Number	Name and Address	Amount	Interest Paid
58	Laurence Saunders Rhodes Apartment #11 336 East Third Street Juneau, Alaska 99801	$1,550.69	$
60	William G. and Bobbi M. Hubbard P.O. Box 4-2015 Anchorage, Alaska	4,010.25	869.42
61	William C. and Ida M. Weimer 30-395A Cherry Drive APO Seattle, Washington 98742	574.75	124.61
62	Elmer E. and Sharon S. Potter 1555 Ursa Court Merritt Island, Florida 32952	1,161.13	251.73
63	Agnes M. Palik 3744 Peterkin Street Anchorage, Alaska	473.25	102.60
65	John Xethers c/o Universal Services Box 238 Amenitka, Alaska 99541	2,548.75	552.57
67	Edward E. and Joanna M. Hollier Box 366 Kenai, Alaska	2,642.00	572.79
68	Vitalis and Waltraud Svazas 49 Foster Circle Fort Rucker, Alabama 36360	1,048.16	227.24
74	Edward O. and Ellen K. Beyers 167B Seven Trails Drive St. Louis, Missouri 63124	569.50	123.47
75	Edward S. E. and Phoebe K. Newbury 5-510 H Street, Apt. B Elmendorf AFB Anchorage, Alaska	828.35	179.59

Claim Number	Name and Address	Amount	Interest Paid
76	Billy S. Rimes A/C/F Angela 712 Bonaventure Road Savannah, Georgia	$ 912.50	$ 197.83
77	Billy S. and Jeannette N. Rimes 712 Bonaventure Road Savannah, Georgia	425.25	92.19
79	Earl E. and Eva B. Allen 8 Alexander Drive Hampton, Virginia 23364	1,190.67	258.14
80	Laverne D. and Thelma L. Buller 425 Kenny Drive Anchorage, Alaska	206.25	44.71
82	Andrew H. Eker 7143 De Barr Road Anchorage, Alaska	638.25	138.37
85	Ralph D. Clukey Maplecrest Apartments, Route 102 Chepachet, Rhode Island	747.00	161.95
86	Barbara Jean Putnam P.O. Box 2424 Anchorage, Alaska	112.50	24.39
87	Clarence L. Jeffers 2001 Lake Otis Park Anchorage, Alaska	17,674.00	3,831.72
89	L. S. Kurtz, Jr. 1558 "E" Street Anchorage, Alaska 99501	713.50	154.69
91	Royce Harvey and Ann Elizabeth Morgan 2203 Lord Baranof Drive Anchorage, Alaska	1,001.66	217.16
92	Royce Harvey and Ann Elizabeth Morgan 2203 Lord Baranof Drive Anchorage, Alaska	985.93	213.75
93	Ann E. Morgan A/C/F Royce Townley Morgan, Minor 2203 Lord Baranof Drive Anchorage, Alaska	308.33	66.85

SCHEDULE D-8
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(Continued)

Claim Number	Name and Address	Amount	Interest Paid
94	Ann E. Morgan A/C/F Philip Harvey Morgan, Minor 2203 Lord Baranof Drive Anchorage, Alaska	$ 308.33	$ 66.85
95	Royce Harven Morgan A/C/F Peggy Ann Morgan, Minor 2203 Lord Baranof Drive Anchorage, Alaska	308.33	66.85

SCHEDULE D-8
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96	Royce Harvey Morgan A/C/F Mary Ann Morgan, Minor 2203 Lord Baranof Drive Anchorage, Alaska	308.33	66.85
98	Francis H. and Fidelis F. Grant 3307 Woodland Drive Anchorage, Alaska 99503	1,985.26	430.40
101	Tommy L. Dome 1611 Turpin Street Anchorage, Alaska 99504	113.00	24.50
103	Alfred G. and Patricia Gronnestad 2771 Rollingsdale Lane Dallas, Texas	583.75	126.56
104	Donald A. Nash P.O. Box 4-1912 Anchorage, Alaska 99503	1,398.75	303.25
105	Diane H. Nash P.O. Box 4-1912 Anchorage, Alaska 99503	2,765.00	599.45
108	Jerry L. and Sylvia W. Coleman 4217 Torino Court Indianapolis, Indiana	494.63	107.24
113	Franklin E. Campbell 1076 Forrester Way Eugene, Oregon	623.30	

Claim Number	Name and Address	Amount	Interest Paid
119	T. W. and Jeri S. Mortensen 525 100 N.E. Bellevue, Washington	$ 962.50	$ 208.67
121	Billy J. and Phyllis Walters 2308 Birch Street Blytheville, Arkansas 72315	148.25	32.14
122	Richard Maytum 4424 East 8th Avenue Anchorage, Alaska	354.00	76.74
129	Arnold Bauman, Guardian ad litem of Dorothy C. Tilney 45 Rockefeller Plaza New York, N. Y.	6,231.00	
125	Draga and Robert D. Caffrey 2926 Wentworth Anchorage, Alaska	1,008.25	218.59
146	Walter L. Teeuwen CMR #1, Box 1858 APO Seattle, Washington 98742	456.25	
152	Emmett and Gwendolyn Roetman 519 Lynnewood Drive Anchorage, Alaska 99502	1,007.15	218.35

153	Emmett Roetman A/C/F Kristin 519 Lynnewood Drive Anchorage, Alaska 99502	200.06	43.37
154	Emmet Roetman A/C/F Russell 519 Lynnewood Drive Anchorage, Alaska 99502	200.06	43.37
157	Kenneth Lauster 10816 Saratoga Circle Sun City, Arizona 85351	3.00	.65
161	Charles C. and Luella Pugh 11616 N.E. Fremont Street Portland, Oregon 97720	4,615.37	1,062.92

Claim Number	Name and Address	Amount	Interest Paid
165	Danny P. Swiderski 823 Fairmount Road Morgantown, West Virginia 26505	$ 989.25	$ 227.82
174	Gene Lanzaro 2115 Lelaray - Apartment No. 202 Colorado Springs, Colorado 80909	20,679.15	4,762.41
178	Stephen C. and Ann LaCaze 1620 Marguerite Street, Anniston, Alabama	1.00	.23
73	David Gerrish Norton 253 Post S. L. San Francisco, California	190.75	43,93
144	Marvin R. and Judith Edwards 4425 East 7th Street, Anchorage, Alaska	669.74	154.24
160	James R. and Betty Carawan P.O. Box 102, Chugiak, Alaska	4,248.29	978.38
162	Clell L. and Mildred Prewitt 1109 West Peebly Drive Midwest City, Oklahoma 73110	5,305.55	1,221.87
164	August L. Woeltz 3042 W. Houston Street San Antonio, Texas 78207	1,704.50	392.55
166	Russell H. and Verona Horton 2251 East Third Drive, Mesa, Arizona	311.68	71.78
167	Russell H. Horton A/C/F Larry Horton, Minor 2251 East Third Drive Mesa, Arizona	273.04	62.88
168	Ronald Van Eykeren 3407 Spenard Road - Space 57 Anchorage, Alaska 99502	1,500.88	345.65

SCHEDULE D-8
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169	James H. and Maria Malone 1628 Alder Drive Anchorage, Alaska	390.80	90.00

Claim Number	Name and Address	Amount	Interest Paid
172(A)	Glen R. and Susan J. Talley 3104 Brookside Drive Spenard, Alaska	$ 4,576.50	$ 1,053.97
172(B)	Glen R. Talley 3104 Brookside Drive Spenard, Alaska	11,185.00	2,575.91
173	Harold V. and Beryle B. Walther 3044 Wentworth Street Anchorage, Alaska 99504	10,284.38	2,368.49
175	Theodore J. Meiners Headquarters Fourth U.S. Army Information Office Fort Sam Houston, Texas 78234	2,440.00	561.93
177	Joseph Andreis Box 8644 Mountain View, Alaska	21.64	4.98
181	Gary William Archer 2812 1/2 Boyer East Seattle, Washington 98102 and Joan Marie Archer 74-305 Candlewood Palm Desert, California 92260	253.38	58.40
183	Perry L. Dedrick 2322 Lord Baranof Drive Anchorage, Alaska	78.29	18.03
184	Gary William Archer 2812 1/2 Boyer East Seattle, Washington 98102	195.00	44.91
185	Richard R. and E. Ellen Sassara 2101 Stanford Dr. Anchorage, Alaska 99504	1,298.98	299.16
188	H. Russell Pace 2201 Tuder Road Anchorage, Alaska	116.00	26.71

Claim Number	Name and Address	Amount	Interest Paid
191	Aubrey K. Bills 4904 Roger Road Anchorage, Alaska 99502	$ 112.00	$ 28.68
		$183,186.34	$38,761.04

SCHEDULE OF ACCOUNTS PAYABLE TRADE - CLAIMS PAID
DECEMBER 18, 1967 TO MARCH 31, 1973

Claim Number	Claimant	Amount
1	The Blue List Publishing Co.	$ 370.44
9	Cadwalader, Wickersham & Taft	11,000.00
10	Louis D. Blum & Co.	10,000.00
32	Bridge Auto Service	299.05
36	Remington Rand Office Machines Div.	288.23
43	The Alaska Communicatons System	10,956.07
46	Chase Office Supplies, Ltd.	97.31
78	Dun & Bradstreet, Inc.	150.00
90	American Telephone & Telegraph Co.	3,765.88
171	Long Island Commercial Review	2,000.00
179	Nordam Cleaning Contractors, Inc.	120.00
182	Irving Trust Company - Rent	5,828.48
	Total	$44,875.46

SCHEDULE OF ACCOUNTS PAYABLE PERSONAL - CLAIMS PAID
DECEMBER 18, 1967 TO MARCH 31, 1973

Claim Number	Claimant	Amount
3	A. Mirabito	$ 2,000.00
6	Bartley DeBuona - Our Hobby Market	5,000.00
15	Incorporated Village of Centre Island	93.17
16	Frank Giandalone - Highland Farms	279.57
26	Hall & Casey	670.00
27	Lewis Oil Co., Inc.	1,129.98
70	Hotine Bros. Inc.	327.42
71	North Shore Laundries, Inc. D/B/A Superior Hand Laundry	70.64
83	David R. Strecker - Bayville Hardware	126.97
100	Irene Hayes, Wadley & Smythe, Inc.	81.55
118	Joseph Parente Village Cleaners	411.85
145	Park East Fish Market, Inc.	77.50
150	E. B. Meyrowitz, Inc.	107.50
151	Arthur W. Pearce, Jr. - St. Anthony Club	94.50
155	Dr. James L. Boyd	80.00
156	Coombs & Oliver, Inc.	109.32
176	Miller, Montgomery & Spaulding	2,542.43
		$13,202.40

SCHEDULE OF CLAIMS PAID - DOROTHY M. TILNEY
DECEMBER 18, 1967 TO MARCH 31,1973

	Total	Tilney & Company	Frederick Tilney
Customer Accounts:			
Lucille Hendrickson	$ 6.00	$ 6.00	$ -
Albert F. & Lucille Meyer	6.00	6.00	-
Charles W. & Zelma Monroe	12.00	12.00	-
	24.00	24.00	-
Accounts Payable, Personal - Claims filed by creditor:			
George Harer, M.D.	15.50	-	15.50
Doubleday	10.50	-	10.50
Mara Animal Hospital	1,103.69	-	1,103.69
Tiffany & Company	169.32	-	169.32
	1,299.01	-	1,299.01
Accounts Payable, Personal - Recorded in books, but no claim filed by creditor:			
B. Altman & Company	49.98	-	49.98
Bayville Limousine Service	15.00	-	15.00
Bergdorf Goodman	30.60	-	30.60
Bon Marche	41.16	-	41.16
Community Hospital of Glen Cove	16.25	-	16.25
Dr. Miner C. Hill	91.00	-	91.00
Lord and Taylor	118.83	-	118.83
Oyster Bay Glass Works	2.04	-	2.04
Purofax Gas Corporation	27.58	-	27.58
Theodore J. Pavent	31.50	-	31.50
R. H. Renken Dairy Co	23.01	-	23.01
Snouder Corner Drugstore, Inc.	190.79	-	190.79
	637.74	-	637.74
Accounts Payable, Personal - Unrecorded and no claim filed by creditor:			
Merdon Carpet Company	260.10	-	260.10
Bonwit Teller	100.47	-	100.47
Watson-Klinge Florists	18.45	-	18.45
Donald Jarvis	200.00	-	200.00
Long Island Lighting Company	93.94	-	93.94
Country Lady	57.53	-	57.53
Razzano Shoes	11.08	-	11.08
Nobmans Hardware	11.91	-	11.91
Seawanhaka Corinthian Yacht Club	258.96	-	258.96
Smith Jewelers	28.56	-	28.56
	1,041.00	-	1,041.00
Total	$3,001.75	$ 24.00	$2,977.75

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH C. HOGAN, being duly sworn, deposes and says:

That he is the duly appointed and acting receiver of Tilney & Company and Frederick Tilney.

That the foregoing account contains, to the best of his knowledge, information and belief, a true statement of all receipts and disbursements received by him or by any other person under his control up to and including the 31stday ofJuly , 1973. The monies and property stated in said account to have been collected and received by him were, in fact, all of the monies and property of Tilney & Company and Frederick Tilney that were collected and received by him, and he has been charged in the said account with all monies and property received by him.

That the several sums of money stated in the foregoing account to have been paid and allowed were actually paid and allowed by him for the various purposes therein mentioned.

That deponent does not know of any error or omission in the foregoing account to the prejudice of any of the parties interested in the said monies or property, or in this action.

(s) Joseph C. Hogan
Joseph C. Hogan

Sworn to before me this
31st day of July, 1973.

(s) James P. Kelleher

JAMES P. KELLEHER
Notary Public, State of New York (Seal)
No. 31-7206351
Certificate filed in New York County
Commission Expires March 30, 1974

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, ALAN HARRIS, being duly sworn, deposes and says:

That he is the former co-receiver of Tilney & Company and Frederick Tilney.

That the foregoing account contains, to the best of his knowledge, information and belief, a true statement of all receipts and disbursements received by him or by any other person under his control up to and including the 10th day of July, 1969. The monies and property stated in said account to have been collected and received by him were, in fact, all of the monies and property of Tilney & Company and Frederick Tilney that were collected and received by him, and he has been charged in the said account with all monies and property received by him.

That the several sums of money stated in the foregoing account to have been paid and allowed were actually paid and allowed by him for the various purposes therein mentioned.

That deponent does not know of any error or omission in the foregoing account to the prejudice of any of the parties interested in the said monies or property, or in this action.

(s) I. Alan Harris
I. ALAN HARRIS

Sworn to before me this
31st day of July, 1973.

(Seal) (s) Jay A. Wallman

JAY A. WALLMAN
Notary Public, State of New York
No. 60-9514625
Qualified in Westchester County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

-against-

TILNEY & COMPANY,
FREDERICK TILNEY,
Defendants.

67 Civ. 4676 D.N.E.

SECOND SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF APPLICATION FOR SURCHARGE

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

FREDERICK TILNEY, being duly sworn, deposes and says:

That I am the general partner of Tilney & Company and am myself a defendant in this action.

That I reside at Centre Island, Oyster Bay, New York 11771, and that I have resided at the same location and same home since 1927.

That on the petition of Joseph C. Hogan and I. Alan Harris sworn to July 31, 1973, attached to an order to show cause returnable October 2, 1973, the only business left to the receivership is an order discharging the receiver and former co-receiver and releasing their bond, approving the reimbursement of expenses and disbursements of Joseph C. Hogan as receiver, approving the reimbursement of expenses and disbursements of Wagner, Quillinan & Tennant, attorneys to the receiver, and directing payment of same, directing payment into the registry of this Court of funds earmarked for payment to creditors, fixing a bar date against the United States Internal Revenue Service, and directing that, to the extent they are not subject to restraining notices, the remaining assets of this estate be turned over to the defendants herein.

That in addition to the remaining business as outlined in the petition of the receiver and ex-receiver dated July 31, 1973 there will remain the disposition of surcharges demanded by creditors through affidavit on January 29, 1971, an affidavit of deponent dated April 17, 1972 and the additional surcharges asserted herein.

That the release of the receivers' bond appears premature in the light of the surcharges.

That the distribution of the residual assets of the receivership after the disposition of the matters set forth in the petition of the receivers dated July 31, 1973 with the exception of the release of the bond by the Court can be accomplished prior to the determination of the surcharges since the benefits of the surcharge would be payable to the defendants.

That the surcharge asserted by affidavit of creditors on January 29, 1971 was in the amount of $500,000 and that a surcharge asserted in an affidavit of deponent dated April 17, 1972 was in the amount of $908,840 which total amount, due to an error in addition, should be corrected to $903,840 have a number of similarities.

That a total of $284,000 of the surcharge items in the surcharge affidavit of the creditors dated January 29, 1971 also appears in the surcharge affidavit of deponent dated April 17, 1972. That the major difference between the affidavit of the creditors and the affidavit of deponent is in the assessment of the value of the loss caused by unnecessary delay in the administration of the estate. The creditors asserted a surcharge of $216,000 while deponent asserted a surcharge of only $50,000.

That deponent due to the great passage of time now concurs in the original estimate of the loss incurred due to the delay established in the

affidavit of the creditors and, therefore, increases the surcharge claimed on this item to the extent of $166,000, raising the total amount of the surcharge in deponent's affidavit of April 17, 1972 to a new total adjusted of $1,069,840.

That in the motion of surcharge of deponent dated April 17, 1972 two items were included which of necessity must be increased due to the passage of time. Loss of income was established at $60,000 and should now be raised to $90,000; loss of interest on capital should also be raised from $90,000 to $135,000; these combined increases will increase the original surcharge by $75,000 to $1,134,840.

That on July 5, 1972 deponent was forced due to lack of funds to plead guilty to a single count of a thirty-one count indictment in the Federal District Court in Alaska for which he was sentenced to five years in the federal penitentiary and fined $3,000 with the sentence reduced to a three-year probationary period without imprisonment. That had the receivership been terminated as it should have been and deponent's assets and funds had been available to him deponent could have defended the action and would not have had to accept the plea. The improper retention of control of the assets of deponent forced the plea. Deponent, therefore, requests this Court to surcharge the entire receivership group $1,000,000 as very reasonable compensation for the deprivation of both his constitutional and civil rights.

That while in Anchorage, Alaska, in November 1972 for the purpose of sentencing deponent discovered that receiver Joseph C. Hogan had in December of 1970 sold certain City Commerce Debentures with a par value of about $56,000 at a price of $18,000 less than the par value at maturity July 1, 1971; that the differential of $18,000 between the matured value and the sales value six

months before maturity has already been claimed as a surcharge item in the affidavit of April 17, 1972; while in Anchorage, Alaska, deponent discovered that the securities had been sold to an insider who in addition to the $18,000 assured recovery at maturity stood to realize an additional $100,000 because of certain conversion features which must have been known to the insider but not to the public. Deponent, therefore, asserts an additional surcharge of $100,000 on account of this transaction.

Information regarding the City Commerce Debentures was noted to the Court in a letter dated November 24, 1972 by deponent on the letterhead of

Governmental Statistical Corporation which letterhead was used solely for convenience, the corporation having been effectively inactive since its real properties were seized by the receiver in the fall of 1971 and are still held by him.

That deponent has suffered great embarrassment and financial loss due to accumulating taxes on property which is to be returned to him, claims for medical services to his family which remain unpaid, loss of valuable insurance rights including all medical protection and the inability to pay necessary living and maintenance expenses. That due to the long delay in the closing of the receivership deponent has had to incur substantial legal expenses. That the receivership group should be surcharged for these losses to the extent of $90,000, which includes educational damages to minors.

That for the convenience of the Court the total surcharge based on the affidavit of creditors filed January 29, 1971, the affidavit of deponent dated April 17, 1972 and the present affidavit is tabulated below.

(1)	Affidavit of deponent of April 17, 1972, as corrected	$ 903,840
(2)	Delay charged by creditors in affidavit of January 29, 1971, not included in (1) above	166,000
(3)	Increase in loss of income in affidavit of April 17, 1972	30,000
(4)	Increase in loss of income on capital in affidavit of April 17, 1972	45,000
(5)	Unconstitutional withholding of property, forcing guilty plea in criminal action	1,000,000
(6)	Sale of City Commerce Debentures to insider	100,000
(7)	Additional damages caused by delay	90,000
	TOTAL SURCHARGE	$2,334,840

That while in Anchorage, Alaska, in July 1972 and November 1972, deponent ascertained that the City of Nome, Alaska, to which the receivers had paid $20,000 and Governmental Statistical Corporation, under the control of the receivers, had to sacrifice $58,500 of fees due it to settle a

lawsuit of $4,000,000 against the receivers, Tilney & Company, deponent, Governmental Statistical Corporation and Dorothy M. Tilney, had won an award which covered the cost of the construction of the Sewer and Water System against which Tilney & Company was supposed to float bonds supported solely by the revenues of the System. That the litigation in the state and federal courts in Anchorage clearly indicates that the City of Nome, its officials and retainers sought to defraud Tilney & Company through withholding substantial information as to the non-operability of the System in 1967 and

that this fraud was carried on against the receivers and their retainers during the course of the settlement of the $4,000,000 lawsuit in 1968 and 1969.

That the extent of the recovery made by the City of Nome from the contractor clearly indicated that the Sewer and Water System was in effect inoperable when completed, the award being for almost the entire cost of the System. That these facts were not made known to Tilney & Company or to Governmental Statistical Corporation by the officials, counsel or advisers of the City of Nome in 1967; that these facts were not made known to counsel to the receivers in Anchorage in the matter of the lawsuit of $4,000,000 against the receivers, Tilney & Company, deponent, Governmental Statistical Corporation and Dorothy M. Tilney in 1968-69.

That the withholding of this information which had been requested in 1967 by Tilney & Company and Governmental Statistical Corporation in connection with the preparation of the sale of the bond issue was a fraud perpetrated by the City, its officials and retainers against Tilney & Company and Governmental Statistical Corporation.

That the surcharge filed April 17, 1972 included $78,500 on account of the City of Nome matter, $20,000 in favor of Tilney & Company and $58,500 in favor of Governmental Statistical Corporation. That this surcharge was based on the "failure of the receivers to require a receipt and release when Tilney & Company signed off in favor of Boettcher & Company on March 8, 1968 permitted the suit, at least against the receivers, Tilney & Company and Governmental Statistical Corporation".

That Tilney & Company wishes to reimburse certain customer creditors due stock short at the time the firm was closed on August 9, 1967 which

had appreciated in market value to the date when the claims to the receivers were paid in 1971 on a cost basis. That such distribution, however, is dependent upon the immediate release of defendant's assets.

That the immediate release of the assets of defendants is essential to the well being of deponent's family in matters of health, education and general welfare. That funds to pay pressing legal fees and make available funds to carry on actions for recoveries are immediately required.

That due to the unavailability of assets, deponent, who is now 62 years of age, and, therefore, has a very limited earning power, of necessity has to act as his own counsel in this surcharge and related matters.

That in connection with the recovery on the surcharge requested in the total amount of $2,334,840 it is the intention of deponent to distribute one third of the net recovery on a pro rata basis to creditors of Tilney & Company and deponent as interest may appear.

That the pressures of inflation have greatly added to the damages caused by the delay in terminating the receivership which delays were solely for the purpose of covering up improper acts of the receiver, the ex-receiver, their counsel and accountants and not for any other purpose other than to forestall counteraction on deponent's part; that this factor has not been calculated in the surcharge.

That due to the acts of omission or commission of the surviving receiver and the receiver resigned as well as their retainers not only the defendants but creditors of the defendants suffered grevious damage which should be compensated by way of surcharge.

Deponent alleges gross mismanagement and intent through conspiracy to defraud not only deponent and Tilney & Company but the creditors of Tilney & Company and deponent as well.

That the delay in winding up the receivership was carried out by the receiver, the ex-receiver and their retainers solely for the purpose of building up unconscionable fees and to "cover up" illegal, improper and fraudulent acts on their part by way of conspiracy.

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That in apportioning the surcharge, deponent recognizes that there must be separability of liability due to the fact that I. Alan Harris resigned in July 1969 after being caught in the "tainted" Waddington transaction, the discovery of which greatly slowed the closing of the receivership due to the studied effort of the surviving receiver, resigned-receiver Harris, the receiver's counsel and accountants to avoid termination for the sole and only purpose of covering up not only ex-receiver Harris' acts but their own acts of fraud, conspiracy as well as perjury in the case of both receivers.

That the long delay in closing the receivership was a studied effort never communicated to me directly to obtain a receipt and release to cover the fraudulent acts and conspiracy as well as perjury in this matter.

That at a hearing held April 19, 1972 the Court appears to have ruled as to the separability of the surcharge from the other phases of the receivership.

That in filing the affidavit of April 17, 1972 deponent notes that the docket number was left off the front of the affidavit although the docket number appeared on Appendix A to that affidavit.

That deponent prays for the reliefs requested in this affidavit and such other reliefs as the Court may deem proper.

Frederick Tilney
Frederick Tilney

Sworn to before me this
21st day of September 1973.

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1393

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

-against-

TILNEY & COMPANY,
FREDERICK TILNEY,
Defendants.

67 Civ. 4676 D.N.E.

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JOSEPH C. HOGAN, being duly sworn, deposes and says:

1. I am the duly appointed, qualified and acting receiver of the assets of the above captioned defendants.

2. I make this affidavit in opposition to the so-called "surcharge" claims referred to in the affidavit of Frederick Tilney dated September 21, 1973, which is entitled "Second Supplemental Affidavit in Support of Application for Surcharge".

3. I object most strenuously to the submission to this Court of the aforementioned affidavit by defendant Frederick Tilney, pro-se. Said defendant should not be permitted to insert such wild, defamatory and baseless allegations into the record. In submitting said affidavit, Mr. Tilney is acting against the advice of his own counsel, for as this Court is well aware, the firm of Cadwalader,

Wickersham & Taft, attorneys for the defendants, has refused to prosecute a claim of surcharge.

In connection with said pro-se application, I refer the Court to the affidavit of Robert F. Wagner, sworn to the 17th day of August, 1972, the affirmation of I. Alan Harris dated August 17, 1972, and Mr. Harris' memorandum entitled "Memorandum in Opposition to Application of Frederick Tilney for Leave to Represent Defendants pro-se with Respect to the Surcharge Claim, and in Opposition to Filing of Supplemental Affidavit", all of which should again be considered by the Court in view of Mr. Tilney's recent submission.

4. In connection with the so-called "surcharges demanded by creditors through affidavit on January 29, 1971", referred to in Mr. Tilney's affidavit, it should be pointed out that said "surcharges" consisted of nebulous and unfounded statements made in an affidavit of Dorothy M. Tilney submitted "on behalf of Dorothy M. Tilney and Bartley De Buona in support of Motion to Terminate Receivership", and were in fact not made by bona fide creditors (all such creditors were paid 100% of their claims, with interest to date of payment). The Court denied the aforesaid motion in its Memorandum and Order dated May 6, 1971, and, I therefore submit, said "surcharges" are not properly before this Court.

5. In connection with the purported "additional surcharges" contained in Frederick Tilney's affidavit of April 17, 1972, I assume that Mr. Tilney is referring to the "Supplemental Affidavit in Opposition to Application for Allowances and in Support of Application for Surcharge" which he submitted to the Court, pro-se, at a time when an affidavit

in opposition to applications for allowances was filed by his attorneys (the latter affidavit, incidentally, being the subject of a detailed reply

affidavit submitted by Robert G. Benisch, Esq.). At a hearing before this Court on April 19, 1972, Mr. Benisch asked the Court whether Mr. Tilney's pro-se affidavit had been properly submitted. The Court replied, at page 12 of the transcript of that day's proceedings:

> "I will say the only papers properly before the court are papers interposed by Mr. Gilheany in behalf of Mr. Tilney, and none other."

As the purposed "additional surcharges" are not properly before this Court, they should not be considered herein.

6. In connection with the subject affidavit of Frederick Tilney dated September 21, 1973, it is my opinion that said affidavit, even if taken into consideration by the Court does not state a basis for a valid surcharge as a matter of law.

Although I hesitate to respond to any of Mr. Tilney's obstreperous distortions, I feel compelled to give the Court at least one example of Mr. Tilney's vicious truth-twisting. As such example, I would like to point out his references to the sale of certain City Commerce Corp. debentures to an "insider". On its face, this charge does not state a basis for a surcharge, but does seem to imply wrongdoing. The facts of the matter - most of which Mr. Tilney is aware of - are as follows:

Acting under the direction of this Court to liquidate the assets of the defendants herein, I endeavored for some time to sell certain City Commerce

Corp. debentures. I contacted the stock brokerage firms of Foster & Marshall, in Seattle, Washington, and Wood, Walker & Co., 63 Wall

Street, New York, N. Y. The latter firm carried my offer to sell in the "pink sheets" for three to four weeks but neither firm obtained for me an offer to purchase said debentures. I obtained an opinion from Mr. Robert L. Thomas, Financial Analyst of Wood, Walker & Co., that City Commerce Corp. was probably not in a very good financial position. He noted that the company had an outstanding bank loan of $1,000,000.00 and, if the loan were called by the bank "the company's financial condition would be severely weakened". He also stated that "Interest on the loan exceeds operating income by a significant margin."

In all, I received only two offers to purchase the debentures. The first came through the law firm of Paul, Weiss, Goldberg, Rifkind, Wharton & Garrison, acting for an undisclosed client, to purchase the debentures at 50% of face value, flat, without interest. I rejected this offer. The same firm subsequently increased the offer to 75% of face value, flat, without interest, also on behalf of its undisclosed client. I then sought the opinion of Mr. Roger Faherty, of the brokerage firm of Faherty & Swartwood, 70 Pine Street, New York, N. Y., who not only advised me, but in fact urged me to sell the debentures at the 75% figure. I then sold the stock to the aforementioned law firm for its client. I did not know the identity of the undisclosed client.

7. The above is merely one example of the unfair

statements made by Frederick Tilney in the subject affidavit and is

representative of material contained in numerous other affidavits, letters, statements and the like, made by Mr. Tilney over the past five and one-half years. The relief requested in the aforesaid affidavit, if said affidavit is considered by the Court, should be denied, as said affidavit does not establish a valid ground for surcharge as a matter of law.

WHEREFORE, I respectfully request this Court to reject Frederick Tilney's affidavit of September 21, 1973; to deny any claim for surcharge; and to grant the relief requsted in the petition of I. Alan Harris and myself dated July 31, 1973.

Joseph C. Hogan
Joseph C. Hogan

Sworn to before me this
28th day of September, 1973.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

-against-

TILNEY & COMPANY,
FREDERICK TILNEY,
Defendants.

67 Civ. 4676 D. N. E.

AFFIDAVIT

IN ANSWER TO AFFIDAVIT OF JOSEPH C. HOGAN DATED SEPTEMBER 28, 1973

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

FREDERICK TILNEY, being duly sworn, deposes and says:

1. That I reside at Centre Island, Oyster Bay, New York 11771, and that I have resided at the same location and same home since 1927.

2. That I am a defendant in the referenced action and the sole general partner of Tilney & Company.

3. I make this affidavit in answer to an affidavit of Joseph C. Hogan, receiver of Tilney & Company and myself, dated September 28, 1973 and served on me as my own counsel, pro-se, by the United States mail, N.Y. GPO, 28, apparently at 8:00 P.M. That service was accomplished at approximately 12:30 P.M., September 29, 1973, when the envelope was extracted from deponent's mail box on Centre Island Road, Centre Island, New York.

4. That Joseph C. Hogan in his affidavit of September 28, 1973 in Paragraph 3 asserts that deponent "should not be permitted to insert such wild, defamatory and baseless allegations into the record". Deponent denies that the allegations included in the surcharge affidavit on April 17, 1972 and again on September 21, 1973 are wild or baseless.

5. That Joseph C. Hogan in his affidavit of September 28, 1973 in Paragraph 5 attempts to indicate that deponent is acting against the advice of his own counsel. That the relationship between a counsel and client would obviously preclude this statement from consideration even if true; that the surcharge affidavit of April 17, 1972 submitted to the Court by deponent was handled through the kindness of Cadwalader, Wickersham & Taft in service in conjunction with other papers served on the same day in this action.

6. That in addition on July 6, 1972 Cadwalader, Wickersham & Taft served papers supporting the position of deponent in requesting the permission of the Court to act as his own counsel and requested a hearing through Notice of Motion and Order to Show Cause; that no action has been taken by the Court in regard to this Motion to permit deponent to serve as his own counsel; that the failure of the Court to take any action on this Motion necessitated the filing of the additional surcharge affidavit, "Second Supplemental Affidavit in Support of Application for Surcharge", on September 21, 1973 due to the fact that a hearing on the Motion of the receivers seeking discharge and exoneration of their bond is to be heard on October 2, 1973.

7. That the Court should refer to the Memorandum of Law submitted by Messrs. Cadwalader, Wickersham & Taft dated June 29, 1972 and the Supplemental Memorandum of Law dated August 21, 1972 supporting deponent's right to act pro-se in the matter of the surcharge.

8. That deponent in his affidavit dated June 28, 1972 warranted to the Court that except in the matter of the pro-se proceedings all other matters of the receivership would be handled through counsel to the termination of

the receivership; that this pledge has been honored and that the only action that deponent has taken is the filing of the Second Supplemental Affidavit described in Paragraph 6 above.

9. That deponent at this time denies all scurrilous allegations of interference in the proceedings which in any way would have impeded the closing of the receivership that this statement is supported by the record.

10. That Mr. Hogan's Affidavit of September 28, 1973 in Paragraph 4 would indicate that the "surcharges demanded by creditors through affidavit on January 29, 1971" had been denied in the Memorandum and Order of the Court dated May 6, 1971; that a careful reading of the Order discloses no reference to the surcharge affidavit of creditors.

11. That as outlined in the affidavit of Mr. Hogan of September 28, 1973, Paragraph 5, the Court spoke to the matter of replying to the affidavit submitted by deponent in conjunction with the affidavit submitted by counsel of deponent opposing the amount of the fees and allowances requested by the receivers, their counsel and accountants, both dated April 17, 1972.

That in addition to the reference by Mr. Hogan of a hearing before the Court on April 19, 1972 the Court also spoke to the matter of the affidavit of deponent filed pro se on page 38:

> "Now turning to Mr. Tilney's affidavit, which is more in the nature, as I understand it, of an application, perhaps, for a surcharge, if you wish to submit any memorandum of law in support of that application and serve it upon your adversaries and furnish the Court with a copy, at that time consideration will be given to it, and I will expect counsel for the receivers to submit any papers in opposition."

The Court again spoke on page 39, line 22:

> "I have merely said that this affidavit, which may be in the nature of an application -- I merely use that for want of a

better means of denominating it -- is something separate and apart from this fee application proceeding. And if Mr. Tilney wants to proceed by appropriate motion and appropriately supported in compliance with all the rules of the Court, he may, and he has permission to do so."

12. That in his affidavit of September 28, 1973 Mr. Hogan outlines some of the details in the transaction of the liquidation of some $56,000 of debentures of the City Commerce Corporation at 75% of face value, flat;

That the buyer of these debentures to the best of my knowledge and belief was Robert E. Ely, Esq., an insider of the Corporation, which apparently necessitated his dealing through Paul, Weiss, Goldberg, Rifkind, Wharton & Garrison, attorneys at law located in New York.

That Mr. Hogan in his affidavit noted that the City Commerce Corporation had an outstanding bank loan of $1,000,000.00 as evidence of its weak position; that Mr. Hogan neglected to indicate that this bank loan was secured by the controlling stock (in excess of 50%) of the Alaska State Bank and that the collateral value behind this loan was tremendously in excess of the value of the loan at the time the City Commerce Corporation debentures were sold.

That attached hereto and marked Exhibit A is an affidavit of Richard Sassara, Manager of the Foster & Marshall office in Anchorage, Alaska, dated November 10, 1972. That this affidavit would seem to raise a question about the veracity of Mr. Hogan's recitation of facts as to the City Commerce Corporation debenture sale.

That in view of the tremendous cash resources available in November 1970 to the receiver that fire-sale liquidation was hardly in order in view of the fact that by that date the receiver could have had no

misunderstanding as to the liabilities of the estate on which the Court ordered distribution of 65% on January 29, 1971 after the surcharge by creditors was interjected; that the actual distribution of the 65% was not made until the latter part of June 1971, a few days before the City Commerce Corporation debentures would have matured with interest; that other debentures outstanding were paid on that date in full;

13. That the Sassara affidavit clearly supports the position of deponent that the sale of Matanuska Valley Bank stock made at or about the same time as the sale of the City Commerce debentures was not made at a reasonable price in relation to the going market.

14. That in filing the affidavit of September 21, 1973 as well as this affidavit acting pro-se deponent is following to the best of his abilities the procedures prescribed by the Court on April 19, 1972.

15. That the Court must be aware that deponent has been without any substantial funds or financial means since the inception of the receivership; that all of his assets and most of the assets of his family have been entailed in the receivership which is now almost six years old; that deponent

could not engage counsel to represent him in the matter of the surcharge due to lack of funds.

16. The lack of funds for deponent's defense in a criminal matter in the Federal District Court in Anchorage, Alaska, caused deponent to apply to the United States of America for defense funds in an affidavit indicating that he had no funds available; that this application was referred by

the Court in Anchorage back to this Court which denied a release of deponent's funds, thus forcing deponent to plead guilty to one count of a 31-count indictment on July 5, 1972;

17. That the long delay in closing this receivership where substantial assets will now become available to deponent could obviously not have been based on any logical desire on the part of deponent to delay the closing and release of his assets.

18. That counsel for creditors of deponent and Tilney & Company who filed a surcharge affidavit on January 29, 1971, which is still before the Court even though the creditors were subsequently paid partially or in full, had been willing to pursue the surcharge matter but on objection of the receiver the Court ruled that such an arrangement could constitute a conflict of interest between Tilney & Company, deponent and their creditors; that Cadwalader, Wickersham & Taft, deponent's counsel and one of the leading law firms of the United States, supported the position that no conflict of interest existed between Tilney & Company, deponent and their creditors but on the contrary that there was a mutuality of interest and that they were willing to step aside in favor of the creditors' counsel taking over the whole case on a consolidated basis.

19. That at the behest of ex-receiver Harris on a Motion to Show Cause the Court ordered an evidentiary hearing called for May 4, 1972 at which time the affidavits attached to the surcharge submitted on April 17, 1972 were to be examined with witnesses present. A substantial number of the persons who had submitted supporting affidavits to deponent's surcharge affidavit of April 17, 1972 were present in Court on that day and the Court directed that

legal research and has awarded fees. The facts have been

those residing in the New York metropolitan area remain available on a 24-hour call; these witnesses were never called to testify and were verbally released by the Court several months later.

That deponent believes that in the matter of the surcharge, now quite clearly reposing in the Court, that those persons who submitted affidavits to deponent's April 17, 1972 surcharge affidavit and other witnesses must be called to give testimony.

20. Receiver Hogan in his affidavit of September 28, 1973 in Paragraph 6 referred to deponent's "vicious truth-twisting" relative to the liquidation of the City Commerce Corporation debentures. The fact that Mr. Hogan's current affidavit of September 28, 1973 does not seem to agree with the attached affidavit of Richard Sassara (Exhibit A) in an important detail leaves the "truth-twisting" somewhat on the other foot; that the method used for transferring the stock from the estate to the ultimate alleged buyer, Robert E. Ely, Esq., an insider, appears novel and certainly indicates some peculiarity in the transaction. The use of attorneys for the acquisition of assets by clients in a situation such as this leaves a great many questions unanswered.

That Mr. Hogan in his affidavit does not indicate any contact with the City Commerce Corporation itself in connection with the liquidation of these debentures indicates a complete lack of care in the liquidation of property; further no contact was made with deponent who had extensive knowledge of the situation and the securities were "dumped" without his knowledge.

That the reliance on Wood, Walker & Company's comments on the Corporation must be questioned in the light of their improper execution of the

sale of a block of Matanuska Valley Bank stock referred to in the attached affidavit marked Exhibit A to this affidavit; further that reference to the advice of Roger Faherty also appearing in Mr. Hogan's affidavit leaves deponent "cold" in view of Mr. Faherty's association with the unfortunate liquidation of the Matinecock Bank stock and the corrupt sale of the Waddington Bank stock when he was associated with Blyth & Company.

The use of proper procedures as outlined in the statutes would obviously have eliminated any possibility of loss on this liquidation since through proper appraisal definite information would have been obtained regarding the certainty of payment of the debentures at par with interest as a minimum on July 1, 1971 and the conversion feature which was to be applied to these debentures which was known to the insiders would have been ferreted out by proper appraisal procedures. As previously noted, the retention of the debentures to maturity would not have affected the distribution to creditors in any manner of the payment of administrative expenses as finally determined.

21. That quite clearly Mr. Hogan in the final liquidations of securities in the estate failed to follow even normally accepted practices of good business judgment and completely disregarded federal statutes in connection with the liquidation of property by receivers which has already been noted to this Court by the United States Securities and Exchange Commission, Messrs. Cadwalader, Wickersham & Taft and deponent, these statutes being 28 U.S.C. 2001 and 2004.

WHEREFORE, I respectfully request this Court to accept this Affidavit in Answer to Affidavit of Joseph C. Hogan dated September 28, 1973 and deponent's affidavit entitled "Second Supplemental Affidavit in Support of Application for Surcharge" dated September 21, 1973 as well as deponent's "Supplemental Affidavit in Opposition to Application for Fees and in support of Application for Surcharge, dated April 17, 1972, for consideration and appropriate hearings.

Frederick Tilney
Frederick Tilney

Sworn to before me this
1st day of October, 1973.

Notary Public

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

RICHARD SASSARA, being duly sworn, deposes and says:

That I reside at Anchorage, Alaska.

That I am the manager of the office of Foster & Marshall, members of the New York Stock Exchange, in Anchorage, Alaska.

That I am familiar with the markets for local Alaska securities.

That in November and December of 1970, I received a telephone call from Joseph C. Hogan, receiver for Tilney & Co., Frederick Tilney, or from someone representing him, asking my opinion as to the value of a block of approximately $56,000 par value of City Commerce 7% convertible debenture due July 1, 1971.

That I indicated to Mr. Hogan or his representative that in my opinion the debenture would be paid at par on the due date, with interest.

That during the same period I have observed, according to the quotation sheets maintained in the Anchorage Times, that Matanuska Valley Bank stock had a range on the bid side of the market of 24 to 26-1/2.

That to the best of my knowledge and belief the stock did not sell in the local market below 24 during November or December of 1970.

That during the period in question, I received no requests for a quotation on Matanuska Valley Bank stock from Joseph C. Hogan, Esquire, or anyone representing him, although

I had handled several blocks for the receivership previously.

Subscribed and Sworn to
before me this 10th day of November, 1972.

Richard Sassara
RICHARD SASSARA

Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

vs

67 Civ 5676

TILNEY & COMPANY and FRESERICK TILNEY,

Defendants.

Before

HON. DAVID N. EDELSTEIN,

District Judge

New York, N. Y.
October 2, 1973 - 11:25 a.m.

APPEARANCES:

FRANKLIN D. ORMSTEN, Esq.,
Attorney for Securities and Exchange Commission

WAGNER, QUILLINAN & TENNANT, Esqs.,
Attorneys for Receiver Hogan
BY: ROBERT F. MULLIGAN, Esq.,
and
ROBERT G. BENISCH, Esq.,
of Counsel

CADWALLADER, WICKERSHAM & TAFT, Esqs.,
Attorneys for Defendants
BY: TERENCE F. GILHEANY, Esq.,
WILLIAM N. CLARKE, Esq.,
of Counsel

Also present:

I. ALAN HARRIS,
Withdrawn Receiver

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE: CORTLAND 7-4580

JOSEPH C. HOGAN,
Receiver

FREDERICK TILNEY,
Defendant.

- - -

THE COURT: Are you prepared to proceed?

MR. MULLIGAN: Good morning, your Honor. Your Honor, this hearing has been brought on by order to show cause which was signed by the Court on September 11, 1973, the service provisions of which provided that service was to be made by regular mail, of the said order on the annexed affidavit, petition and final report and account on the plaintiff, the defendant, on Saxe, Bacon and Bolan, attorneys for Dorothy M. Tilney, on John H. Doyle, III, guardian ad litem for Dorothy C. Tilney, on Hertz, Herson & Company, and Louis D. Blum & Company on or before 5 p.m. on September 15, 1973.

An affidavit proving compliance with the service provisions of this order were filed with the clerk of the court on September 12, 1972. Your Honor, the purpose for which this receivership was instituted have been accomplished. Not only have all the creditors been paid in full but they received interest on their claims. Accordingly, this application has been made on behalf of Joseph C. Hogan, Receiver, and I. Alan Harris, former co-Receiver, in which they filed their final joint account covering the period from December 18, 1967 through July 16, 1969, and the final account of Joseph

SOUTHERN DISTRICT COURT REPORTERS
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cause? You are aware of the contents of those papers. Now, this is an opportunity for you to object if you have any objections.

MR. GILHEANY: We have no present objections, your Honor, to the contents of the papers as submitted to the Court.

THE COURT: This is in effect amotion brought on before this Court for approval of the final accounting.

MR. GILHEANY: That is correct, your Honor.

THE COURT: Isn't that the only matter raised by these papers?

MR. GILHEANVY: I believe it is, your Honor.

THE COURT: Then what does your position mean?

MR. GILHEANVY: Your Honor, the defendants have noobjection to any particular detail of the final accounting. I think it is a matter of arithmetic, it is a matter of numbers, we have no objection to that.

THE COURT: Do you have any objection to any other matters raised by this motion?

MR. GILHEANVY: No, your Honor. Again, our position is that we have no objec tion to it with respect to the discharge application for discharge of the Receiver and the ex-Receiver, we specifically would not want our statement of no objection to be construed as an approval of all of the

actions which the receiver and the ex-receiver had taken through the Court.

THE COURT: Is that raised by this motion?

MR.GILHEANY: Your Honor, quite frankly it was not clear to us whether it was or not but we simply wanted to make it clear on the record that our statement of no opposition would not be construed by any other party to the proceeding as being such an approval. I believe that is not raised by this motion and on that understanding again I can reiterate that we have no opposition to the present application.

Thank you, Your Honor.

THE COURT: Does the SEC wish to be heard?

MR. ORMSTEN: Your Honor, we do not have any objection or opposition to this application.

THE COURT: Who is the gentleman seated beside you, Mr. Gilheany?

MR. GILHEANY: This is my partner, Mr. William Clarke, Your Honor.

THE COURT: I think there is still a matter which has been raised by Mr. Tilney in connection with his affidavit concerning surcharge. Is not that correct?

MR. GILHEANY: I, Your Honor, as I believe your Honor and the other parties are aware, my firm as attorneys for

defendants, has not taken any part or submitted any papers in this proceeding with respect to the surcharge claims of Mr. Tilney, and we would wish to maintain that position at this time. There was a motion made by my firm on behalf of the defendants sometime ago which I don't believe, your Honor, was ever disposed of, asking that Mr. Tilney be allowed to repsresent himself pro se in matters connected with the surcharge claims. And if it is proper at this time, I would renew that motion on a spoken basis and ask that Mr. Tilney be allowed to present his own position, rather than myself or Mr. Clark.

THE COURT: What you are asking in effect is that you be permitted to withdraw at least as to one aspect of this receivership. Namely any possible matters of allegations involving surcharge, isn't that correct?

MR. GILHEANY: That's correct, your Honor.

THE COURT: As to that, you're relieved.

MR. GILHEANY: Thank you very much, your Honor.

THE COURT: Is Mr. Tilney in court?

MR. TILNEY: I am, your Honor.

THE COURT: Would you please step forward. Do you wish to be heard?

MR. TILNEY: Yes, your Honor. I would appreciate the Court hearing me. The matter of the surcharge which I

had brought as my own counsel and which I have asked leave to represent myself as my own counsel is before the Court in papers. I have tried in all good conscience to maintain the absolute decorum that I feel the Court requested of me originally when the papers were filed. I believe the papers speak for themselves and will require some adjudication. Thank you, sir.

THE COURT: Mr. Tilney, you have heard your counsel Mr. Gilheany who was represented you and has indicated today in response to this order to show cause to have the final accounting of the Receivers approved, state that he has no objection, and you are aware that as to that, this Court accepts him as your representative. Do you have any objection to that?

MR. TILNEY: I do not have any objection to that at all. He is my representative in that matter, sir.

THE COURT: Do I also understand you to say that you also have no objection to this motion for final accounting as the Court has read these papers and understands them to mean that the Court is being asked for approval; you understand that?

MR. TILNEY: I have no objection, sir, with one exception. I believe the relief of the bond might be premature in view of the surcharge.

THE COURT: But you have no objection to the approval of this final accounting; is that correct?

MR. TILNEY: I do not, your Honor. The final accounting is acceptable to me and as it is to my attorneys.

THE COURT: Very well. That still leaves the matter of surcharge open, gentlemen. Do you wish to address yourself as to that?

MR. BENISCH: Your Honor, with the Court's permission I would like to address myself on behalf of the Receiver, his maintainers, counsel and accounts to this application for surcharge. Initially, your Honor, I submit to the Court that there is presently pending before the Court no formal application for a surcharge. There have been papers, I believed subtitled supplemental affidavit prepared by Mr. Tilney pro se which were submitted with or at the time the Receivers applied for allowance herein. At the hearing on the application for allowance, I raised the question as to whether the Receiver and counsel would be obliged to reply to the contents of this supplemental affidavit in support of an application for surcharge, and at that time we were directed by the Court, and I quote from the record as page 12 of the hearing on April 19, 1972, as follows:

"THE COURT: I will say the only papers properly before this Court are the papers interposed by Mr. Gilheany

in behalf of Mr. Tilney and none other."

Your Honor, those papers were the affidavit in opposition to the application for fees. The report therefore did not accept the filing of the affidavit in support of the application for a surcharge. So that initially I submit to the Court that there is not properly before this Court an application or at least the Court has not accepted the application.

Now, at the time that this affidavit was submitted to the Court for filing, I raised the argument with the Court that this affidavit, unlike the affidavit in opposition to the allowance, was being submitted pro se, and that Mr. Tilney's counsel, very able counsel, the firm of Cadwallader, Wickersham and Taft, it refused to lend its name to the submission of these papers. Now today counsel has come in and seeks to withdraw from the surcharge aspect of this case. And I submit, your Honor, that the withdrawal does not alter the fact that the Cadwallader firm does not want to lend its name to these papers, for the very simple reason that it considers them to be unfounded, spurious and of no merit, and they don't want to get involved with them.

The withdrawal, if you will, being a cop-out, accomplishes nothing; they withdraw by the very fact that they ask to withdraw, they are indicating that they don't consider

these papers worthy of attaching their name to them to have the Court consider them. So I submit, your Honor, that to permit Mr. Tilney to proceed on a pro se basis here when he has been represented by very able counsel throughout, is irregular and is giving Mr. Tilney a right or the opportunity to come in and place before this court and on the shoulders of the administrators, a burden of having to respond to some very, very outrageous allegations; so outregeous, I submit, that counsel for Mr. Tilney does not want to lend its name to them and does not even want to proceed and represent Mr. Tilney or continue representing Mr. Tilney in this matter.

So that I am fully aware, your Honor, that parties or people must have their day in court. But I submit to this court that it is not the function of the day in court or the Court's function here to permit parties who are represented by counsel, and when they have a disagreement with counsel, to say well, all right, I will go on a pro se basis because you are not following my wishes or you are declining to follow my wishes with respect to a certain avenue of attack I want to make.

Now, I would presume and I think it would be true that there has been some great soul-searching by the Cadwallader firm here. They have reviewed the papers, they

have made a rational decision based on their experience and their expertise in this field. This rational decision has been not to lend their name to these papers and to ask the Court for permission to withdraw. That being so, I don't think that the Court should now permit Mr. Tilney to, irrespective of this judgment, to proceed pro se and foist on the administrators the obligation of dealing with these papers.

Secondly, almost the very same contents or subject matter, your Honor, that is contained in the application for a surcharge, that is, the first affidavit and this second supplemental affidavit which has been submitted, were also contained in the affidavit in opposition to the application for fees herein. Perhaps the second supplemental affidavit has updated the original affidavit, but the original affidavit for a surcharge and the affidavit in opposition to the fees were almost identical documents. They simply asked for different relief. In the one instance they asked for a reduction of fees with respect to the affidavit in opposition. With respect to the affidavit of surcharge they both asked for a surcharge with respect to the same facts.

So these facts have been before the Court before. The Court has made a decision based on these facts and has awarded fees after hearing, consideration and, I assume, sound

legal research and has awarded fees. The facts have been before this Court. So I submit, your Honor, that the Court's decision on these facts has already been decided and from that standpoint is res judicada.

I will not get into addressing myself to my personal reaction to the content of these affidavits for a surcharge because I happen to think they are outrageous. But I think it quite strange, your Honor, or not highly appropriate to permit an individual to have his counsel withdraw, proceed pro se, when this individual and his veracity and his character is well-known to this court and the people of Alaska. And I submit that it is a travesty to foist upon the Receivers theobligation of having to respond to the contents of these affidavits. If the Court decides that it will charge the Receivers with responding to these allegations, I submit that there is going to be a substantial amount of time entailed in this; and on that basis or in that event I would ask the Court that it make a condition, if it so decides to allow Mr. Tilney to proceed pro se, that security be posted to cover additional applications for allowance in contesting this application for a surcharge. Because I say to your Honor that based on a reading of the facts in this that, in my opinion, there will be no question that we will be vindicated and successful. But I don't think it fair to permit

Mr. Tilney to take a shot and to expect counsel and Receivers and the accountants to bear the cost of that shot on their own. They should compensated if in the event they are successful.

I will stipulate today that in the event we are not successful we will take no compensation. But in the event we are, we be compensated for the fair and reasonable value of our time in opposing what I consider to be an outrageous attack by Mr. Tilney.

THE COURT: I am not certain that your argument gives me enough illumination on some of the trouble, some areas that are involved here. Am I to understand you to say that because a client and his attorney have had a disagreement, regardless of the merits of that disagreement, that he is not entitled to proceed to act in his own behalf?

MR. BENISCH: No, your Honor, I am not saying that. What I am saying today is that the function of this court, this proceeding, is not to permit a forum or provide a forum for people to come in and take a shot at something.

THE COURT: Isn't that an adequate decision based on the respective merits of the question?

MR. BENISCH: Your Honor, it is. But I submit one of the very, very strong indications of the merits of the contents of this affidavit is the fact that counsel, very able

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -against- TILNEY & COMPANY and FREDERICK TILNEY, Defendants	1967 Civil Action File No. 4676

APPLICATION BY HERTZ, HERSON & COMPANY
(SUCCESSOR TO B. BERNARD GREIDINGER & COMPANY)
FOR ALLOWANCE OF COMPENSATION

TO THE HONORABLE DAVID N. EDELSTEIN, JUDGE
UNITED STATES DISTRICT COURT:

The application of Hertz, Herson & Company, Certified Public Accountants (successor to B. Bernard Greidinger & Company, Certified Public Accountants, merged on October 1, 1971), respectfully shows:

1. B. Bernard Greidinger & Company is the firm of Certified Public Accountants employed by Joseph C. Hogan and I. Alan Harris, as Equity Receivers, pursuant to orders of this court dated December 18, 1967.

2. All of the services for which compensation is requested herein were rendered in connection with these proceedings and in furtherance of applicant's employment and the duties and responsibilities of the receivers herein, as required under the orders of the court.

3. Previous compensation has been allowed to applicant in these proceedings from the assets of the debtors in the amount of $61,552 plus reimbursement for disbursements in the amount of $674.77 covering the period December 18, 1967 to January 31, 1972.

4. The firm of B. Bernard Greidinger & Company, Independent Certified Public Accountants (Hertz, Herson & Company, the successor) have been engaged in the practice of public accounting for a period in

excess of twenty-five years, during which period they have been retained to conduct many special investigations of corporate affairs and have participated extensively in proceedings under civil actions and under Chapter X and Chapter XI of the Bankruptcy Act before various United States District Courts.

5. The instant proceedings involving the debtors, Tilney & Company (a partnership engaged in business as a security broker and dealer) and Frederick Tilney (an individual) as well as many transactions with affiliated companies, the general public (security customers), banking and lending institutions, members of Frederick Tilney's family and third parties were extremely complex and prolix. The applicant was previously required to expend substantial amounts of time for the purpose of investigating and reviewing the affairs of the debtors and for the prosecution and defense of various claims asserted during the course of the administration of these debtors' estates.

6. The nature of additional services provided during the period February 1, 1972 to September 30, 1973 included preparation of various financial reports, complex fiduciary income tax returns and other tax filings and responses to inquiries. In addition, applicant was required and assisted in the preparation of the Receivers' final accounting. Various other services were required in connection with resolution of tax matters, payments to creditors, meetings and discussions with the Receiver and his counsel as a basis for concluding matters pending before the court and in resolution of estate problems. The foregoing is merely a brief recitation of the nature of services which were required to be rendered in these proceedings since the date of the prior application to the court in order that all activities can be properly terminated.

7. The professional services rendered for the Receiver covers a perios of approximately twenty-one months. In connection with the services rendered during this period the applicant has expended in excess of 344 hours. The time charges exclude telephone discussions and conferences with the Receiver, counsel and various other necessary persons, internal conference time, all typing and other office administration time expended

on behalf of accounting and administration matters, the time requirements of which were substantial. Based upon rates requested in the prior application, which are in excess of twenty-percent below going rates, the charges for the aforementioned services would amount to $12,526. Even considering the reduced rates recommended by the Securities and Exchange Commission in their letter, dated May 19, 1972, the charges would amount to $7,682.40. A summary of these details follow:

	Hours	Reduced Rates		Rates Recommended by The Securities and Exchange Commission	
Partners.....	66	$55	$ 3,630.00	$33	$2,178.00
Senior staff.....	278	32	8,896.00	19.80	5,504.40
	344		$12,526.00		$7,682.40

In addition, the applicant has expended $200.80 in disbursements ($96.00 for photocopy @ $.10 plus production of reports and tax returns of $104.80). Accordingly, on the basis of the foregoing, applicant requests an allowance of $12,526.00 on account of aforesaid services and $200.80 reimbursement for out-of-pocket expenses.

Dated: New York, N. Y.
Oct 2, 1973

HERTZ, HERSON & COMPANY

By: B Bernard Gudewicz

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

B. BERNARD GREIDINGER, does hereby make solemn oath that he is a member of the firm of Hertz, Herson & Company, certified public accountants, the applicant named in the foregoing application and that the statements contained therein are true to the best of his knowledge, information and belief.

B. Bernard Greidinger

B. Bernard Greidinger

Sworn to before me this 2nd day of October, 1973.

William Edward Wasserman

WILLIAM EDWARD WASSERMAN
Notary Public, State of New York
No. 30-9545164 Qual. in Nassau Co.
Certificate filed in New York County
Commission Expires March 30, 19 74

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

67 Civ. 4676 (DNE)

TILNEY & COMPANY,
FREDERICK TILNEY,

Defendants.

---------- X

EDELSTEIN, Chief Judge:

O P I N I O N

The receiver and the former co-receiver in this equity receivership have petitioned the court for an order allowing their account, discharging them as receiver and former co-receiver, and granting certain other relief directed at the termination of the receivership. A hearing on this motion was held on October 2, 1973. Counsel for the Securities and Exchange Commission stated that the S.E.C. had no objection or opposition to the application. Counsel for defendants took a position which, for purposes of precision and clarity, is quoted here:

> MR. GILHEANY: Your Honor, the defendants have no objection to any particular detail of the final accounting. I think it is a matter of arithmetic, it is a matter of numbers, we have no objection to that.

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THE COURT: Do you have any objection to any other matters raised by this motion?

MR: GILHEANY: No, your Honor. Again, our position is that we have no objection to it with respect to the discharge application for discharge of the Receiver and the ex-Receiver, we specifically would not want our statement of no objection to be construed as an approval of all of the actions which the Receiver and the ex-Receiver have taken through the course.

Transcript of hearing of October 2, 1973, pp 5-6. Defendants' counsel further sought leave for defendant Frederick Tilney to proceed pro se with respect to one aspect of the case, the presentation of a surcharge claim. [1/] The court asked the parties to submit memoranda on the issue of Tilney's right to proceed pro se and reserved decision on the matters raised at the hearing.

The threshold question confronting the court in its consideration of the receiver's application for final accounting and discharge is the issue of pro se representation by defendant Tilney with respect to his surcharge claim. Tilney has not sought to dismiss his counsel and proceed pro se with respect to all aspects of this litigation. Rather he seeks a hybrid form of representation in which counsel of record would represent him for all purposes except the prosecution of the surcharge claim, in which he would represent himself. [2/]

The question presented here--whether in a civil case a party who is represented by counsel may also be heard in person--is governed by the principles set forth in the case Brasier v. Jeary, 154 F.Supp. 631 (D. Neb. 1957), aff'd, 256 F.2d 474 (8th Cir. 1958). In that case the plaintiff's original complaint was signed personally by the plaintiff and also by his attorney. When plaintiff sought to argue a motion personally, the trial judge denied his request, holding that "The orderly administration of the judicial processes requires that when a party has counsel, counsel shall make all appearances." Brasier v. Jeary, 154 F.Supp. 631, 632 (D. Neb. 1957). On appeal the Eighth Circuit Court of Appeals held that 28 U.S.C. § 1654, which provides a litigant with the right to appear personally or by counsel, does not create a right to representation personally and by counsel. The court found that the request made by plaintiff "comes clearly within the discretionary power of a trial judge to control and regulate the orderly procedure of the trial." Brasier v. Jeary, 256 F.2d 474, 477 (8th Cir. 1958). While Tilney's request in this case is not made in the context of a trial, this court sees no valid reason for applying a different rule to a protracted receivership proceeding.

Several courts have dealt with the question of what considerations should govern the trial court's exercise of

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its discretion when faced with a request like the one made here. Judge Medina found it clear that a federal judge has discretion to regulate defendants' right to be heard personally

> to maintain order, prevent unnecessary consumption of time or other undue delay, to maintain the dignity and decorum of the court and to accomplish a variety of other ends essential to the due administration of justice, which are so various as to make it both unnecessary and unwise to attempt to specify and enumerate them all.

United States v. Foster, 9 F.R.D. 367, 372 (S.D.N.Y. 1949). The Court of Appeals for the District of Columbia, when confronted with a hybrid representation case, was guided by the principle that "[w]here a party is represented by competent counsel his case should be conducted by that counsel unless it becomes apparent that the interests of justice require the party's active participation pro se. Such circumstances are rare." Overholser v. DeMarcos, 149 F.2d 23, 27 (D.C. Cir. 1945). The Court of Appeals for the Second Circuit upheld the lower court's refusal to allow hybrid representation because "[t]he trial judge may well have thought this would cause delay and confusion in the trial." United States v. Private Brands, Inc., 250 F.2d 554, 557 (2nd Cir. 1957).

Tilney has not alleged that his counsel is less than competent; indeed he has been ably and diligently represented

throughout the course of this proceeding. Accordingly, the court need not focus on the question of adequate representation. Rather, in determining whether the facts of this case constitute that rare set of circumstances which justify permitting hybrid representation, this court must weigh the receiver's argument that Tilney is attempting to frustrate and further delay the receivership by the prosecution of claims which are devoid of substance and have already been considered by the court against Tilney's contention that the interests of justice require the court to grant his application to proceed with the surcharge claim because denial of the application will effectively deprive him of all opportunity to present the surcharge claim on the merits. 3/ Integral to the resolution of this question is a determination of the issues of whether the allegations by Tilney possess, on their face, sufficient substance, as a matter of law, to justify further delay in an already protracted proceeding and of whether hybrid representation is Tilney's only method of having his claims heard by the court. Accordingly, it is necessary to examine the allegations made by defendant Tilney.

The majority of the allegations made by Tilney here were submitted to the court, with the court's permission, by affidavit dated April 17, 1972, in the context of an

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application for fees made by the receivers, their counsel and the accountants. With respect to these allegations there is no merit to Tilney's contention that denial of hybrid representation will preclude any consideration of these claims by the court. Many of the allegations relate to sales of assets which were carried out under the close supervision of the court. 4/ Another group of claims is based on actions taken by the receivers pursuant to specific orders of the court. 5/ These allegations, along with the remaining charges made in Tilney's April, 1972 affidavit, were considered and rejected by the court in its opinion of October 19, 1972 (attached hereto as Appendix A). In light of the attention which the court has already given to the transactions on which the instant group of Tilney's surcharge claims is based, the court is not persuaded that the interests of justice require approval of Tilney's application to proceed pro se with respect to these charges.

By affidavits dated September 21, 1973 and October 1, 1973 Tilney has attempted to present additional bases for surcharging the receivers. In addition to reiterating the allegations of the 1972 affidavit, the 1973 submissions raise several additional claims. It is the contention of the receivers that these claims are so devoid of substance that it would be an abuse of the court's discretion to permit

Tilney to proceed pro se with respect to these allegations. In order to determine whether these claims justify the delay which will be caused by granting Tilney's application for hybrid representation, the court will review these allegations in the light of the legally recognized causes for imposing a surcharge.

A surcharge imposed at the time of the final accounting is the sanction for a receiver's breach of duty which results in injury to anyone interested in the estate. Phelan v. Middle States Oil Corp., 154 F.2d 978 (2nd Cir. 1946). A receiver's duty is "to exercise the same character of prudence and skill in handling the receivership property as he would exercise in dealing with his own property . . . . When he uses ordinary care and prudence, . . . he has fulfilled the measure of his official duty and is not answerable for losses which occur to the property and assets in his charge." Tardy, Smith on Receivers § 43 (2nd ed. 1920). A surcharge may be imposed if the receiver is "negligent in the management of the trust estate or has wasted its assets." 2 Clark, Receivers § 419 (3rd ed. 1959). It is against this standard that Tilney's allegations must be measured.

The first new claim in the 1973 affidavits is that in 1972 Tilney was forced by lack of funds to plead guilty to one count of a thirty-one count indictment for fraud in the

sale of securities in federal district court in Alaska; for this he requests that the receiver be surcharged in the amount of $1,000,000. This claim is completely frivolous. Tilney does not allege loss to the estate which is entrusted to the receivers. Any personal damage suffered by Tilney, even if real, is merely incidental to the existence of the receivership and cannot be said to be the result of waste or negligence by the receivers.

Tilney also seeks a surcharge for the sale of debentures of the City Commerce Corporation to a law firm (which was otherwise in no way involved in this receivership) acting on behalf of a client. The sale itself was one of many sales which was supervised by the court during the course of this receivership, and in its review of the sale, made at the time of the October 19, 1972 decision on the fee application, the court found no impropriety. Tilney's 1973 allegation that the sale was improper because it was made to a law firm does not constitute an allegation that the receivers breached their duty of care and prudence in the management of the estate and, therefore, does not state a basis for surcharging them.

Finally, Tilney has made a variety of claims including perjury by the receivers and fraud by the City of Nome. Whatever the merits of these contentions, they

involve matters which are in no way properly before the court.

Having reviewed defendant Tilney's so-called surcharge claims, the court has concluded that each of these claims has either been considered by the court previously or, on its face, is devoid of legal substance. Therefore, the argument made by Tilney that the interests of justice require the approval of hybrid representation is without merit. The interests of justice do not require the court to devote time to reviewing claims which it has already considered or to conducting evidentiary hearings on claims which have no basis in law. The effect of approving hybrid representation here is to delay further the closing of this receivership and to extend the burden carried by both the receivers and the defendants for no valid reason. Accordingly, in the exercise of its discretion, the court will deny defendant Tilney's application to proceed pro se in the matter of the surcharge.

Also before the court at this time is the application of Hertz, Herson & Co., accountants to the receivers, for additional compensation for services rendered after the court's award of compensation of October 19, 1972. The receiver has filed an affidavit in support of the application; counsel for defendant Tilney has submitted a memorandum in opposition. In awarding a fee of $61,552 to Hertz, Herson

& Co., the court characterized that fee as final and stated:

> The court has considered the recommendation of the [Securities and Exchange] Commission and also the fact that additional work still will be required. It would be unwarranted not to reflect this factor in the compensation awarded.

Opinion of October 19, 1972, p. 14.

The additional services for which the accountants now seek compensation include preparation of tax returns, financial reports, and the final accounting. None of the services outlined by Hertz, Herson in its application is unusual or unforeseeable; all of them relate to the normal operation of a receivership and the resolution of estate problems. These are precisely the future services whose value the court included in its 1972 award. Granting of this application would constitute unwarranted double compensation. Accordingly, the application for additional fees is denied.

The accountants have also requested reimbursement for out-of-pocket expenses in the amount of $200.80. This request is approved and payment is directed.

The final matter before the court concerns the receivers' application for allowance of their final accounting and certain other relief integral to the termination of the receivership. Neither the Securities and Exchange Commission nor Tilney's counsel has interposed any objection to the

application. The court has reviewed the final account of the receivers and finds it to be in order. Therefore, the court will grant the relief requested by the receivers. The account as brought down to the date of July 31, 1973 is allowed. Joseph C. Hogan and I. Alan Harris are to be discharged as receiver and former co-receiver and their bond released. Reimbursement of expenses and disbursements of Joseph C. Hogan, receiver, in the amount of $945.00 is approved. Reimbursement of expenses and disbursements of Wagner, Quillinan, and Tennant, attorneys for the receivers, in the amount of $215.58 is approved and payment is directed. Funds earmarked for payment to creditors who remain unpaid shall be paid into the registry of the court. A date thirty days from the date of entry of the order terminating the receivership shall be fixed as the date beyond which the United States Internal Revenue Service is barred from asserting any claim against the receiver or former co-receiver. The remaining assets of the estate, to the extent they are not subject to restraining notices, shall be returned to defendants.

Settle order on notice.

DAVID N. EDELSTEIN
Chief Judge

FOOTNOTES

1/ This request was not Tilney's first effort to have his surcharge allegations heard by the court. A document entitled "Supplemental Affidavit in Opposition to Application for Fees and in Support of Application for Surcharge" was filed on April 18, 1972. At a hearing held on April 19, 1972, the court granted Tilney leave to submit a memorandum on the issues raised by the affidavit. By Notice of Motion dated June 28, 1972, Tilney sought leave to represent himself with respect to his surcharge allegations. The court refrained from ruling on this request until the present time because consideration of a petition for surcharge was premature until the receivers presented their accounting.

2/ In his affidavit of June 28, 1972, Tilney said of the surcharge claim, "it is the only issue I seek to prosecute pro se, and my counsel would take no part in it; with regard to all other matters in this proceeding, my counsel would remain my sole representative and spokesman." At the hearing on the accounting on October 2, 1973, Tilney's counsel continued to speak on his behalf with respect to all but the surcharge contentions; and on February 13, 1974, counsel submitted a memorandum on behalf of Tilney with respect to an application by the accountants to the receivership for additional fees.

3/ Tilney's counsel has stated that "there are differences between Mr. Tilney and defendants' attorneys of record with respect to the surcharge claim which preclude prosecution of the claim by counsel of record." Defendants' Memorandum of June 29, 1972.

4/ See transcripts of February 27, 1968, August 6, 1968, April 7, 1969, July 16, 1969, July 24, 1969, October 15, 1970, and April 19, 1972 with respect to the sale of stock in Alaska State Bank, Matinecock Bank, Matanuska Valley Bank, and Waddington Bank and the liquidation of debentures of the City Commerce Corporation.

5/ Tilney has complained about settlements by the receivers of a judgment against D. Raymond Kenney & Co. and a suit by the City of Nome, Alaska. These actions were taken by the receivers pursuant to court orders dated November 18, 1968 and April 15, 1969 respectively. He has also complained that the receivers acted improperly in expunging certain claims of members of the Tilney family; these claims were expunged pursuant to court orders dated December 30, 1970 and January 14, 1971.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	67 Civ. 4676 (D.N.E.)
- against -	:	AFFIDAVIT SUBMITTED IN SUPPORT OF APPLICATION FOR A REHEARING
TILNEY & COMPANY, FREDERICK TILNEY,	:	
Defendants.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

This affidavit is submitted in support of a motion for a rehearing and a reconsideration of the Court's decision of February 21, 1974, said motion to be returnable at a time and place to be fixed by the Court. It

* * * *

* * * *

In addition to the information contained herein deponent acting pro se would have requested and did request an evidentiary hearing at which time witnesses would have been called to testify as to the matters contained in this affidavit and the two supplemental affidavits previously filed as well as to other related matters.

This affidavit asserts that as of March 15, 1974 after the receiver had paid out approximately $265,000 in claims, $39,000 in customer interest covering over four years as well as $20,000 to the City of Home and administrative expenses of at least $350,000 (including real estate taxes accrued of about $50,000) has on hand to return to deponent and deponent's affiliated companies real and personal property,excluding recoveries and tax shelters, with a value substantially in excess of $1 million excluding deponent's wife's interest in joint property and her own personalty recently released to her. This property is subject to real estate mortgages of approximately $150,000 and deponent is responsible for paying approximately $40,000 to customer creditors of Tilney &Company by way of market adjustments for their accounts per agreements with them. There are in addition miscellaneous liabilities incurred prior to or at the time of the receivership of about $25,000 and legal bills in connection with the receivership which will have to be paid by deponent amounting to about $80,000.

That the above liabilities can only be met when deponent's property is released.

That the immediate return of all assets to the control of deponent is essential to the preservation of values and the prompt payment of overdue accounts, taxes, legal expenses and general liabilities as well as long overdue maintenance.

This affidavit asserts that a rehearing will permit deponent to have the use of the power of subpoena to bring in witnesses who may testify as to the true state of the administration of the receivership and to specific transactions about which deponent complains in the surcharge; that without an evidentiary hearing the Court could not possibly have knowledge of the true circumstances surrounding the surcharge.

* * * *

* * * *

research in exactly the same manner as the claim of the Marine Midland Tinker National Bank was satisfied; that Exhibit C confirmed numerous previous verbal and written suggestions which, if followed, could have closed the receivership within twelve to fourteen months after the appointment of the receivers.

That during the course of the receivership the receivers and/or receiver sought to obtain control of assets covered by cross guarantees at the Long Island National Bank of Hicksville, New York, which bank held the assets as collateral for a loan of Governmental Statisticial Corporation; that these efforts extended over virtually the entire life of the receivership and were resisted by the Long Island National Bank; that the receiver withdrew legal action against the Long Island National Bank by stipulation after appearing in New York State Supreme Court and being rebuffed by the Court.

That during the course of the receivership the receivers and/or receiver consistently pursued assets of Governmental Statistical Corporation which assets should never had been needed to close the receivership.

That during the course of the receivership the receivers acquired and the receiver liquidated real property of deponent and others in Anchorage, Alaska; that in connection with this liquidation the receiver's attention was invited in Court by the Commission to the provisions of Section 2001 of Chapter 28 of the United States Code; that after required appraisals of the Alaska property were made a greatly improved price was obtained over that previously agreed upon between the receiver and the buyer.

That during the course of the receivership the receivers and/or receiver and their counsel have persisted in threats against deponent's home as an

asset to be liquidated when such liquidation was and still is not necessary; that both the Court and the Commission have indicated a resistance to this approach but that the receiver has persisted even to threatening liquidation as late as October 10, 1972.

That in Court on November 27, 1972 Mr. Hogan indicated that deponent had accosted a gentleman whom Mr. Hogan had sent to view deponent's home on Centre Island Oyster Bay; that deponent identifies this gentleman as

Mr. Lloyd Griscom. In referring to this visit receiver Hogan stated:

> "About three days before your opinion came down, a person whom I know intimately who lives out in the Island landed by plane in center island -- he commutes by plane -- I told him it might be on the market. He did go on the premises. Mr. Tilney accosted him just as he was leaving the grounds. He didn't go in the house, threw him off verbally and told him he had just been that afternoon --" (Lines 17-20, page 18, transcript of November 27, 1972).

That deponent has known Mr. Griscom for many years and when deponent returned home on October 10, 1972, the date of Mr. Griscom's visit, had a pleasant chat with Mr. Griscom in the presence of deponent's son. Mr. Griscom had stated the purpose of his visit and said he had been informed by receiver Hogan that the property "while not now on the market might soon be put on the market". Deponent agreed that this was a possibility and assured Mr. Griscom that deponent would keep in touch with him if he were interested and would welcome further visitations and an inspection of the interior of the premises.

That this tactic by receiver Hogan is an excellent example of the harrassment that has been applied to deponent and deponent's family throughout the entire history of the receivership and the falsehoods frequently

mouthed by the receivers and their counsel as to the acts of deponent.

That throughout most of the course of the receivership the receiver and his counsel have threatened deponent and deponent's wife with contempt unless deponent did their bidding regardless of the damage that might be done to deponent's creditors, deponent's family and deponent.

That the willingness of deponent to permit liquidation even of his home for the benefit of the receivership estate is attested to by a letter to the receivers dated April 11, 1969 (Exhibit F) which communication brought forth a response from the receivers in a letter to deponent dated April 14, 1969 (Exhibit E).

That at various times the receivers, their counsel and accountants have indicated either directly or through communication to deponent's counsel and others that they intended to run up substantial fees regardless of the size of the estate or the size of the claims to be paid.

That on January 7, 1970 a meeting was held in the office of Joseph C. Hogan. Present at the meeting were: Dr. B. Bernard Greidinger, Mr. Jerry

Klein (accountants for the receivers--B. Bernard Greidinger & Company; currently, Hertz, Herson & Company); Robert G. Benisch, Esq., (of counsel to Wagner, Quillinan & Tennant); Joseph C. Hogan, Esq.; Franklin D. Ormsten, Esq., representing the United States Securities and Exchange Commission; deponent, and deponent's wife. That at this meeting every effort was made to pressure deponent and his wife into agreeing to acquiesce to the closing of the estate on whatever terms the receivership group would dictate; no statement of interim fees or allowances had been made and no payments had

been made to the creditors although there was sufficient cash on hand to pay all creditors and to allow for fees without invading other assets; that at this meeting deponent and his wife suggested a letter to creditors to notify them of the status of the estate.

That at the meeting of January 7, 1970 deponent again reiterated his position of his willingness to pledge all of his assets including his home to expedite the termination of the receivership.

That the harrassment and the long delay in closing the receivership were schemes on the part of the receivers and their retainers to blackmail deponent into signing a release in favor of the receivers and their retainers of any liability for improper or illegal actions and for exacting fees far in excess of any reasonable relationship to value of services rendered and the amount of liabilities; that at the meeting of January 7, 1970 the position of the receivers, their counsel and accountants was best expressed in the words of Dr. B. Bernard Greidinger -- "the fees are the cream off the top of the bottle".

Detailed Review of the Time Records of the Receivers and their Retainers in Relation to the Volume of Work to be performed

This affidavit previously noted at the bottom of page 3 that the time work of the receivers had been broken into seven periods ending January 31, 1972. The award of final fees based upon the recommendations of the Commission took into account work accomplished up to that date and the Commission's recommendations as to final fees assumed that work terminated on that date but that some additional work would have to be carried on. The Court's opinions of October 19, 1972 and February 21, 1974 established this point.

* * * *

HARDSHIPS

That during the period of the receivership, December 17, 1967 to February 21, 1974, deponent's immediate family consisted of his wife, Dorothy M. Tilney, and three children whose names and ages are: Kathleen G. Tilney, age 20; Dorothy C. Tilney, age 16; Frederick Tilney, Jr. age 13.

That during the unnecessarily extended period of the receivership, deponent and his family suffered great and grievous deprivations involving their health, education and general welfare.

That personalty of deponent's wife, Dorothy M. Tilney, was improperly held at direction of the receivers (Exhibit E, letter from I. Alan Harris of April 14, 1969) and was not released until the fall of 1973 when it became apparent that valuable antiques were about to become uninsured; that far from being wealthy all of deponent's assets and those of his family were entailed in the receivership.

That any allegations of wealth outside the receivership or available to deponent, his wife or minor children for any purpose during the course of the receivership would constitute a fraud and deceit and if made under oath perjury.

That the receivers took no meaningful responsibility for the maintenance or care of valuable real property and that such care as was accomplished was a direct drain upon the meager cash resources of deponent's wife or accumulated small obligations against the properties.

That during 1972 deponent was without funds to carry on a proper defense at a criminal trial in Anchorage, Alaska, (United States District Court for the District of Alaska, Cause A-47-70 Criminal) and that he was forced to

plead guilty on July 5, 1972 because of lack of funds for defense; that the payment of the fine of $3,000.00 levied by the United States District Court, Anchorage, Alaska, on November 6, 1972 on account of the guilty plea had to be obtained through the relinquishment to deponent's wife of a $4,000. certificate of deposit which had been created by the amortization of certain notes of the Long Island Commercial Review which were the absolute property of deponent's wife but which had been improperly and illegally impounded by the receivers and which were never part of the receivership estate.

That deponent had to borrow money from friends and associates to make the trip to enter his plea and that the same condition prevailed when he returned to Anchorage on November 6, 1972 for sentencing.

That during 1972, deponent, his wife and children suffered great privation being without funds to pay necessary living expenses and that during the summer and through mid-December 1972 the family resided in a home without heat, electricity, cooking facilities other than gasoline stoves and open fires and for most of the period without telephone.

That during the course of the receivership deponent's three children were forced to leave private school due to the inability of deponent or his wife to meet the tuition; that due to this their education was damaged. That deponent's children suffered great privation and psychiatric injury due to the appointment of a guardian ad litem who cross examined them as though they were criminals which examination resulted in requiring neurological attention.

That during the course of the receivership deponent and wife had to surrender valuable life insurance and that the family has not been covered

with health insurance for several years.

That medical and dental treatments have had to be deferred for lack of funds to the detriment of all members of deponent's family. That it was suggested by practitioners that members of deponent's family seek welfare assistance for medical purposes; that in view of the substantial resources remaining in the hands of the receiver such action was precluded.

That deponent's children have been deprived of adequate clothing and other necessities of life.

FALSE ALLEGATIONS BY THE RECEIVERS, THEIR COUNSEL AND ACCOUNTANTS

That the allegations made by the ex-receiver, the current receiver and their counsel either in open court or under oath regarding interference by deponent and deponent's wife were perjured or false and fraudulent.

That the allegations of interference in the matter of the receivership were referred by counsel to the receiver to the Court as a matter of criminal contempt in which both deponent and deponent's wife were named (Hearing of June 28, 1971).

This action led to both deponent and deponent's wife being interviewed separately by an Assistant United States Attorney in the presence of their respective counsel. During the course of the hearing on June 28, 1971 the representative of the United States Securities and Exchange Commission stated (lines 8-20, page 18):

> "The letters to which reference was made in the petition are letters which I term as strongly worded letters, but I think the nub of the matter really is have actions taken by Mr. or Mrs. Tilney inhibited or obstructed effectively the liquidation of assets.

I think that is what is important, because I think that in a matter which has gone on as this has for some time, where there are, in addition to material things, emotions and feelings that evidently become involved, where you will have certain irritations and to some extent we have to discount that.

I think the really important thing is the interference with the liquidation of assets."

At the time of the hearing, distribution to creditors to the extent of 65% had already been ordered. Counsel for deponent's wife pointed out to the Court (line 21 to end of page 14; line 2 - 9, page 15):

"The record is replete with unanswered letters by creditors.

They just have not kept track of the creditors. When they did come into court to have the 65 per cent paid, your Honor questioned them on a number of events -- I was not here but I read the transcript -- and they did not have the elementary back-up material which your Honor requested.

They did not work on it. They now have $430,000 in cash for $260,000 of creditors.

There is an excess of $170,000.

It is really scandalous that these creditors have not been paid and the estate wound up."

This affidavit should have made apparent that deponent and deponent's wife would be the last persons to wish to impede the termination of the receivership. Allegations of interference with the liquidation of assets measured against the actual position of the estate at various stages of this long protracted receivership are simply falsehoods. Deponent's attempt to obtain the best possible prices for items being liquidated is understandable as a matter of self-protection and preservation.

In an open evidentiary hearing with live witnesses the allegations of the receivers and their counsel as to interference would be given the lie.

* * * *

* * * *

material reduced the amount of interest paid, the interest being based on a period of 3 1/2 years.

That in support of this affidavit there are attached Exhibits A through F. Certain portions of this affidavit are based on information and belief which deponent believes to be absolutely reliable.

Frederick Tilney

Sworn to before me this
16th day of March, 1974.

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

TILNEY & COMPANY,
FREDERICK TILNEY

67 Civ. 4676

TIME ANALYSIS OF RECEIVERS AND RETAINERS
ON FINAL APPLICATIONS IN THE RECEIVERSHIP OF
TILNEY & COMPANY AND FREDERICK TILNEY

I.	December 17, 1967	----	July 31, 1968
II.	August 1, 1968	----	October 31, 1968
III.	November 1, 1968	----	June 30, 1969
IV.	July 1, 1969	----	October 31, 1969
V.	November 1, 1969	----	October 31, 1970
VI.	November 1, 1970	----	October 31, 1971
VII.	November 1, 1971	----	January 31, 1972

ANALYSIS CONSISTS OF 84 PAGES

NOTES TO APPENDIX

This Exhibit is included in the appendix as a separate volume numbered "1".

EXHIBIT A
TO AFF. 3/16/74
67 CIV. 4676

NOTES TO TILNEY & COMPANY'S SUMMARY OF POSITION
DECEMBER 19, 1967

In order to give the Receivers the clearest possible picture of the available assets of Tilney & Company, a partnership, and of Frederick Tilney, the general partner, the following summary has been prepared supported by fourteen schedules.

Not included in the liabilities are certain monies due the limited partner including her partnership interest of $2,500. In addition, the limited partner has advanced securities and/or cash to the partnership prior to and since August 9 which will be subject to a further detailed schedule. The amount of these advances it is believed are not large.

The schedules show the book value of the assets and are then in the second column reduced to the value of marketable securities and/or cash. Loans outstanding are indicated in the third column with the excess equity shown in the fourth and final column.

Following are comments on each of the fourteen schedules attached:

Schedule 1:

The free securities are largely domiciled in the box of the partnership at the Irving Trust Company, One Wall Street.

In arriving at the value of the marketability securities, no consideration has been given to the stock or 7 1/2% demand Notes of the Governmental Statistical Corporation. All of the other items can be liquidated at or near the market values indicated. The notes and stock of the Governmental Statistical Corporation are backed by real property, accounts and notes receivable and work in progress, having a very substantial value.

Schedule 2:

Mr. Tilney's free securities, domiciled in his safe at Oyster Bay or in a box at the Matinecock Bank, Locust Valley, have an assigned value of $162,139. Of this total, $2,004 can be considered as marketable.

The stock of the Long Island Commercial Review has a value but has not been taken into account when considering the value of the marketable securities. The same is true of the stock of the Tilney Construction Company and the notes of that organization. The Tilney Construction Company owns real property with a value in excess of $100,000 against which there are no mortgage liens, the only prior liens against these properties being current taxes. Both of these items with a value of $89,160 while not current quick assets could be liquidated and the stock value realized and the notes paid.

EXHIBIT B
TO AFF. 3/16/74
67 CIV. 4676

Schedule 3:

No value has been assigned to a past due note of the Governmental Statistical Corporation held as collateral in this loan.

Schedule 4:

This schedule covers marketable securities held under loan at the Franklin National Bank. Of the exempt securities, a substantial portion are the property of Tilney & Company, Inc. In determining the funds due by brokers in Schedule 8 following, the market value of the bonds of Tilney & Company, Inc. have been deducted from both the total value and the marketable securities of cash value.

Schedule 5:

All of the securities in Schedule 5 are considered to be marketable, the one item which might not fit in this category being $11,000 Governmental Statistical Corporation 7 1/2% Notes. The status of these notes if more fully discussed under Schedule 6.

Schedule 6:

All of the securities in this schedule have definite marketable value, the one exception being $89,000 Governmental Statistical Corporation 7 1/2% Notes. The Governmental Statistical Corporation has outstanding $104,000 of these Notes which are specifically secured by a net loan value of approximately $44,000 on keyman life insurance of that corporation and a $30,000 certificate of deposit with the Long Island National Bank of Hicksville maturing on December 21. The total amount of the issue outstanding is $104,000, $11,000 of which is pledged to the Marine Midland Grace Trust Company of New York and $89,000 to the Long Island National Bank: $4,000 are held by a private investor.

The corporation has passed a resolution to borrow the full amount available on the keyman life insurance and with the proceeds of the certificate of deposit to raise $74,000 in cash, $13,000 of which will be used to pay past due and current accrued interest to February 1, 1968 on the issue. Therefore, $61,000 will be remaining which can be used to redeem notes by call at par.

The Long Island National Bank holds the earliest numbered notes of this issue and under the terms of a loan agreement would be entitled to receive payment of this amount as well as $11,123 of accrued interest to be applied to that bank's loan in the principal amount of $139,200. The interest on the $11,000 noted held by the Marine Midland Grace Trust Company of New York would be available to be applied to that institution's loan. Only $500 of interest would be disbursed to the individual private investor.

After the redemption of $61,000 of the Notes, there would be outstanding $43,000 of which $28,000 would be held by the Long Island National Bank, $11,000 by the Marine Midland Grace Trust Company and $4,000 by an individual investor.

Under the terms of the loan agreement, the keyman life insurance policies would continue to be pledged to the payment of these notes. In the event of the demise of any key person, the funds would flow directly to the paying agent, the Marine Midland Grace Trust Company or their successor, and would be used for the redemption of the Notes.

Since the keyman life insurance program has considerable value and Governmental Statistical Corporation is planning to consolidate its obligations, it will be necessary during the course of the consolidation of obligations to redeem the $43,000 of notes plus accrued interest at the earliest practicable moment. Under the circumstances, the notes are considered to have a full face value of par.

Schedule 7:

All of the securities in this schedule are believed to be marketable at the prices indicated.

Schedule 8:

After adjustment as referred to in the notes in Schedule 4 preceding, the total amount due by brokers and customers has been reduced to a net of $150,068. Of this figure, $31,658 is considered marketable either by way of liquidation or offset.

No marketable or cash value has been assigned to the note of D. Raymond Kenney & Company although it is believed that this obligation can be liquidated after appropriate legal action.

Schedule 9:

Bank balances -- notes on the schedule are made a part of the schedule.

Schedule 10:

Accrued interest computed to 12/19/67 and dividends with record dates of December 19, 1967 or earlier are included as quick current assets with approximate payment dates and net collections on payment dates indicated.

Schedule 11:

(a) Accounts for which the firm was liable at the time of the freeze.

(b) Work accomplished in connection with the freeze and audit.

Schedule 12:

A complete detail of funds due customers accompanies Schedule 12. All dividends of record November 16, 1967 are included. A supplemental list is being prepared for the new dividends that total $546.35 some of which, however, are not of record prior to December 19, However, the supplemental list includes all dividends in the Standard & Poor's dividend record of December 12.

Schedules 13 and 14:

Self-explanatory.

ONLY COPY AVAILABLE

TILNEY & COMPANY

SUMMARY OF POSITION, 12/19/67

Schedule	Assets	Total	Marketable Sec. or Cash	Loan & Interest	Excess
1	Free Securities, Firm	$ 605,998	$ 100,798	$ --	$100.798
2	Free Securities, Partner	162,139	2,004	--	2,004
3	Bankers Trust, Partner	106,698	81,698	27,279*	54,419
4	Firm, Franklin National	378,300	378,300	363,000**	15,300
5	Firm, Marine Midland Grace	198,906	198,906	88,648**	110.258
6	Firm, Long Island National	248,841	248,841	139,200(1)	109.641
7	Firm, Matanuska Valley	146,720	146,721	66,000(1)	80,721
8	Firm, Due by Broker	150,068	31,658	--	31,658
9	Firm, Bank Balances	33,054	33,054	--	33,054
10	Firm, Accrued Int. & Div.	19,464	19,464	--	19,464
		$2,081,847	$1,241,444	$684,127	$557,317

* Interest computed to 12/19/67.
** Interest computed to 12/1/67.
(1) Interest to be computed, increasingamount of debit.

Liabilities

11	Accounts Payable (a) confirmed	$27,732		
	(b) projected	16,500		
			$ 44,232	
12	Funds due Customers	$73,973		
	Securities due Customers at market 12/19/67	178,454	252,427	
13	Taxes and miscellaneous obligations		2,935	
14	Due Brokers		2,461	
			$302,055	

SCHEDULE 1

FREE SECURITIES OF TILNEY & COMPANY

IN BOX AT IRVING TRUST COMPANY OR

ALASKA STATE BANK

AS OF DECEMBER 19, 1967

Name of Security	Quantity	Unit Market Price	Total Market Value
Alaska State Bank	666	50	$ 33,300
Cities Service	10	46 3/8	464
City Commerce Corporation	8,830	20¢	1,766
Bank of Westbury Trust Company	61	20	1,220
CIT NY Corp.	1	58	58
First National Bank of East Islip	9	34	306
Long Island National Bank	1	21	21
Matanuska Valley Bank	1,583.8	30	47,514
Matinecock Bank	148	21	3,108
National Bank of Alaska	51	52	2,652
Valley National Bank	9	30	270
Airlift International	36	6 1/8	221
Alaska Airlines	15	11 3/4	176
Western Airlines	1	35	35
Pan American World Airways	1	25	25
Florida Capital Corporation	100	4 1/8	413
Steadman Shares in American Industries	14.372	12.59	181
			91,730
City Commerce Corp., Debentures	9,750	93¢	9,063
			$100,793

Investment in Governmental Statistical Corporation:

Common stock -- at cost	1,200
7 1/2% Demand Notes dated 7/1/66	500,000
	$605,993

SCHEDULE 2

FREE SECURITIES

FREDERICK TILNEY

AS OF DECEMBER 19, 1967

Shares	Security	Book or Market	Value
10	National Bank of Alaska	52	$ 520
90	Tilney & Company, Inc.	100	9,000
4	Advisers Fund	9	36
2	Bank of Westbury Trust Company	19	38
2	First National Bank of East Islip	34	68
380	Long Island Commercial Review	55	20,900
4	Long Island National Bank	21	84
5	PNA (now Western Airlines)	35	175
3	Valley National Bank	30	90
50	Victoria Algoma	15¢	7
1,620	Governmental Statistical Corp.	20	32,400
4	Alaska State Bank	50	200
74	Tilney Construction Corporation	840	62,160
10	First Long Island Corporation	100	1,000
--	Notes, Tilney Construction Co.	par	27,000
35	Matinecock Bank	21	735
500	GSC Warrants	15	7,500
			$161,913
	Half interest in Advisors Fund at Irving		226
			$162,139

SCHEDULE 3

BANKERS TRUST COMPANY

FREDERICK TILNEY

EXISTING LOANS AND COLLATERAL

As of the close of business, December 19, 1967

Collateral:

Shares	Security	Market	Value
300	Alaska State Bank	50	$ 15,000
210(1)	Bank of Babylon	27	5,670
194	Bank of Suffolk County	100	19,400
101	Long Island National Bank	21	2,121
653(2)	Matanuska Valley Bank	30	19,590
8	Valley National Bank	30	240
937(3)	Matthecock Bank	21	19,677
$25,000	Demand Note, Governmental Statistical		---
			$ 81,698

(1) Securities of Tilney & Company, partnership.

(2) 603 shares, partnership securities.

(3) Some of these shares are the property of Dorothy M. Tilney.

LOAN BALANCE -- DECEMBER 19, 1967 INCLUDING INTEREST $27,279.17.

SCHEDULE 4

COLLATERAL OF TILNEY & COMPANY AT FRANKLIN NATIONAL BANK

AS OF DECEMBER 19, 1967

Par	Security	Coupon	Maturity	Value
$20,000	Alaska State Development Corp.	3.50	8/1/69	$ 19,400
75,000	Alaska State Development Corp.	3.50	8/1/70	71,250
15,000	Alaska State Development Corp.	3.50	8/1/71	14,100
30,000	Alaska State Development Corp.	3.90	8/1/77	26,400
5,000	Alaska State Development Corp.	4.80	8/1/83	4,250
2,000	Fairbanks, Alaska	4.80	1/1/73	2,000
25,000	Kodiak SD, Alaska	3 7/8	3/1/84	20,250
100,000	Parma CSD #1, N. Y. *	3.60	12/1/93	85,000
40,000	Fairbanks, Alaska *	5.00	1/1/86)	
20,000	Fairbanks, Alaska *	6.00	1/1/74)	88,000
30,000	Fairbanks, Alaska *	5.00	1/1/80)	

Shares		Market	
1,940	Matinecock Bank	21	40,740
92½	Western Airlines	35	3,238
8	Chrysler Corp.	54	432
10	Federal Pacific Electric	26	260
10	Comsat	49	490
10	Anaconda Copper	46	460
10	Newmount Mining	64	640
10	Cities Service	47	470
15	Scott Paper	26	390
10	Cessna Aircraft	44	440
			$378,210

LOAN AS OF NOVEMBER 30, 1967-------- $363,300

* These bonds are the property of Tilney & Company, Inc. and secure Tilney & Company's loan to that firm.

SCHEDULE 5

COLLATERAL OF TILNEY & COMPANY

AT MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK

AS OF DECEMBER 19, 1967

Shares	Security	Market	Value
43	Bank of Babylon	27	$ 1,161
108	First National Bank of East Islip	34	3,672
$11,000	Governmental Statistical Corp. 7 1/2% 1969	100	11,000
967	Alaska State Bank	50	19,350
1,104	Bank of Suffolk County	100	110,400
88	Long Island National Bank, Hicksville	21	1,848
1,737	Watinecock Bank	21	36,498
366	Matanuska Valley Bank	30	10,980
96.17	Waddington Bank	40	3,847
5	Valley National Bank	30	150
			$198,906

LOAN INCLUDING INTEREST AS OF NOVEMBER 30, 1967--------$88,647.85

SCHEDULE 6

COLLATERAL OF TILNEY & COMPANY AT LONG ISLAND NATIONAL BANK

AS OF DECEMBER 19, 1967

Shares	Security	Market	Value
375	Bank of Suffolk County	100	$ 37,500
3	Valley National Bank	30	90
1,299	Matinecock Bank	21	27,279
579	Alaska State Bank	50	28,950
52	First National Bank in Yonkers	16	832
756	Matanuska Valley Bank	30	22,680
691,681	Waddington Bank	40	27,643
$ 9,000	Governmental Statistical Corporation 7 1/2% Notes	100	89,000
21	Bank of Babylon	27	567
48	First National Bank of East Islip	34	1,632
10	First National Bank of Anchorage	700	7,000
109	National Bank of Alaska	52	5,668
			$248,841

LOAN BALANCE ---------$139,200

SCHEDULE 7

COLLATERAL OF TILNEY & COMPANY AT MATANUSKA VALLEY BANK

AS OF DECEMBER 19, 1967

Shares	Security	Market	Value
1,800	Alaska State Bank	50	$90,000
46,094	City Commerce debentures	93	42,867
69,268	City Commerce. Common	20¢	13,854
			$146,721

LOAN BALANCE $66,000

SCHEDULE 8

DUE BY BROKERS AND CUSTOMERS TO TILNEY & COMPANY

D. Raymond Kenney & Co.	12/19/67	$118,410
Tilney & Company, Inc.	12/19/67	201,434
J. Stevenson	12/19/67	665
Rice	12/19/67	2,569
		$323,078

The account of D. Raymond Kenney & Co. is disputed by the proprietor of that firm but in the opinion of counsel, Cadwalader, Wickersham & Taft, the account is a valid obligation. The question on this account will be the ability of D. Raymond Kenney & Co. to raise funds.

The Tilney & Company, Inc. account is secured by the pledge of $100,000 Parma CSD #1, N.Y. 3.60% bonds due 12/1/83 with a value of $85,000 plus $90,000 bonds of Fairbanks, Alaska, with a value of $88,000 (see Schedule 4). In addition, accrued interest receivable or to be paid on January 1 totals $4,150 (see Schedule 10). The value of the collateral including accrued interest is, therefore, about $177,000, leaving a deficiency of $24,000 which is covered by 200 shares of Alaska State Bank stock owned by Tilney & Company, Inc. but carried in the name of Tilney & Company with a market value of $10,000. Certain other miscellaneous assets of Tilney & Company, Inc. less some miscellaneous liabilities would reduce the difference and application of additional funds by Tilney & Company's stockholders would make this obligation good in the entire amount. However, since $173,000 of market value of securities in the Parma and Fairbanks bonds are carried in the collateral at the Franklin National Bank only $28,434 of this figure can be considered as a current collectable item in Schedule 8.

The Stevenson item is secured and the collateral is in the firm's safe deposit box.

The Rice account is either a collection on a fraud bond or is offset by an error made by Francis I. duPont & Co. which firm is owed $2,461.41 for offset purposes.

SCHEDULE 9

BANK BALANCES -- TILNEY & COMPANY AS OF 12/19/67

Chase Manhattan Bank	$ 491.89
Meadow Brook National Bank, Financial Office	13.07
Meadow Brook National Bank, Great Neck Office	10.32
Irving Trust Company, Segregated Account	15.26
Matanuska Valley Bank, Business A/C	1,385.66
Matanuska Valley Bank, Customers A/C	993.25
National Bank of Alaska	645.76
Franklin National Bank	374.61
Marine Midland Grace Trust Co.	109.29
Matanuska Valley Bank, Certificate of Deposit	7,000.00
Alaska State Bank	22,014.37 *
	$33,053.54

* Subject to attachment.

SUMMARY OF ATTACHMENTS -- ALASKA STATE BANK

Four liens have been filed against Tilney & Company's account at the Alaska State Bank; on one lien we have no information except the debit advice. This lien was paid on October 16, 1967 in the amount of $1,280.73.. We have been attempting to determine the other information regarding this lien.

The first lien filed against the bank account was by Russell F. Hoehn (Acct. N37) on July 24, 1967 who asked for $9,483.90 and received $8,228.32. Mr. Hoehn had due him at this time cash in the amount of $5,320.00. In addition, Mr. Hoehn has due him,as indicated in Schedule 12, 50 shares of Halliburton with a market value of 62 on December 19 or $3,100.00. Mr. Hoehn's cost on the Halliburton stock was $2,313.00. Mr. Hoen also has due him one share of General Instruments by way of a stock dividend. As of December 19, the General Instrument stock

had a market value of $57.00.

The Alaska State Bank Profit Sharing Trust (Account N124) filed a lien in the amount of $7,000 on August 16, 1967 to cover non-delivery of 200 shares of Pacific Northern Airlines (now Western Airlines) purchased by them at a cost of $4,767.50 and 100 shares of Northern Consolidated units purchased at a cost of $846.50. On November 15 this account was due $115 on dividends and after November 15 the sum of $25. The market value of 100 Western Airlines stock on December 19 was $3,562.50 and 100 shares of Northern Consolidated Units would be valued at $550. The bank in filing its lien included court costs of $856.20 and the Court is holding $347.35 pending a claim by Tilney & Company. In this instance, the depreciation of the securities substantially offsets any loss that the customers might have had and actually appears to place the customer in a preferred position. Dividends credited on securities not delivered originally will have to be adjusted downward.

Floyd H. Boyster and Marjorie G. Boyster (Acct. N5) who is due $8,691.36 according to the August 9 audit filed an attachment of $10,112.38 and received $5,505.32.

In summarizing the attachments against Tilney & Company's account, which is carried as having a balance of $22,014.37, the following disbursements were made:

7/24/67	Russell F. Hoehn	$ 8,228.32
8/16/67	Alaska State Bank Profit Sharing Trust	7,000.00
10/16/67	Unknown	1,280.73
10/31/67	Floyd and Marjorie Boyster	5,505.32
		$22,014.37

It would appear that the account has no balance other than the $347.35 to be claimed from the Court.

While considering the deposits in the Alaska State Bank as a cash asset, they are apparently in reality an offset to liabilities. To the extent of Court costs, the asset item would have to be reduced.

SCHEDULE 10

TILNEY & COMPANY

DIVIDENDS AND ACCRUED INTEREST DUE AND ACCRUED

The accrued interest to December 19, 1967 on all debt securities paying interest is shown in the schedule below and the date of actual collection of the coupons and the amounts are also indicated.

			To 12/19/67	Coupon Collection	
$55,844	City Commerce Corp., Debentures	7%	$ 1,824.24	1/1/68	$ 1,954.54
100,000	Governmental Statistical Corp.	7½%	11,645.35	2/1/68*	12,500.00
145,000	Alaska State Development Corp.	Various	2,030.95	2/1/68	2,600.00
2,000	Fairbanks	4.80%	45.06	1/1/68	48.00
25,000	Kodiak	3 7/8	293.32	3/1/68	484.38
			$15,838.92		$17,586.92

* Issue to be called on or before 2/1/68.

The more important stocks that are now ex-dividend and are owned by the company or its partner are listed with the number of shares, record date and the payment date of dividends declared.

Dividends			Partner's	Record	Payable	
6,097	Matinecock Bank	20¢	937	12/7	1/3	$ 1,219.40
274	Bank of Babylon	60¢	--	12/11	12/29	164.40
3,736	Alaska State Bank	60¢	300	12/19	1/3	2,241.60
						$ 3,625.40

Tilney & Company, Inc. owns $190,000 of bonds under loan at Franklin National Bank. Of these bonds, $100,000 Parma CSD should have paid $1,800 on December 1. This credit must be checked since no credit advice has been received. The Fairbanks bonds will pay their coupons on January 1.

$100,000	Parma CSD	12/1/67	Not credited but due	$ 1,800.00
70,000	Fairbanks	5%	Payable 1/1/68	1,750.00
20,000	Fairbanks	6%	Payable 1/1/68	600.00
				$ 4,150.00

Total accrued interest and dividends accrued and collectable 12/19/67 $19,464.32

SCHEDULE 11

TILNEY & COMPANY

ACCOUNTS PAYABLE

DECEMBER 19, 1967

American Telephone & Tel., Long Lines	$ 2,207.80	
Appeal Printing	26.25	
Louis D. Blum & Co.	5,822.03 *	**
Bridge Auto Service	299.05	
Cadwalader, Wickersham & Taft	4,821.54	**
City of Anchorage	32.28	
City Commerce Corporation	88.52	
Chase Office Supplies	80.19	
Communications Group	8,112.93	
Friden	12.34	
Gustave Fielitz	53.55	
Irving Trust Company	2,140.25	***
Long Island Commercial Review	2,070.21	
Moody's Investors Service	319.20	
National Quotation Bureau	195.30	
Nordan Cleaners	90.00	
Pruddens Digest	50.00	
Remington Rand	299.46	
Standard & Poor's Corporation	20.10	
Xerox Corporation	504.81	
City Commerce Corporation, rent	487.00	
	$27,732.81	

* $750.00 paid by Tilney & Company, Inc.

** There will be an addition charge by Cadwalader, Wickersham & Taft estimated at about $8,500 to $9,500 over the amount indicated above. Louis D. Blum & Company will be entitled to about $7,200 in connection with the final audit.

*** Monthly rental -- $917.25.
Rental assumed by Tilney & Company, Inc. through verbal agreement with the Irving Trust Company after August 9.

SCHEDULE 12

TILNEY & COMPANY

DUE CUSTOMERS

(a)	Customers' funds due	$73,426.57
(b)	Dividends, 11/17/67-12/19/67	546.35
	Total funds due customers, 12/19/67	$73,972.92
(c)	Market value of securities due customers 12/19/67	178,454.00

See Schedule A, pages 1 through 8, attached covering Items (a) and (c) above.

Item (b) will be submitted by supplemental separate schedule.

SCHEDULE A
(pages 1-8)

TILNEY & COMPANY

CUSTOMERS' ACCOUNTS BALANCES OF

SECURITIES AND CASH DUE

WITHOUT INTEREST TO 11/15/67

		8/9/67 Corrected Balance	11/15/67 Balance
N124	Alaska State Bank, Profit Sharing Trust 100 Western Air 100 Northern Consolidated	$ 90.00	$ 115.00
N47	Earl Allen & Eva B. Allen	1,191.17	1,191.17
N149	A.W.Alvin 273 Northern Cons. Airlines	5.46	5.46
N110	Joseph Andreis .38 General Instrument Corp.	9.98	9.98
N1	Gary William Archer 5 Western Air	2.50	2.50
N1A	Gary William Archer & Joan Marie Archer JT W R O S 6 1/2 Western Airlines	1.63	2.26
AC4	Joseph Michael Balestreri & Kathleen Patricia Balestreri JT W R O S 5 Western Airlines 20 Potter Instrument 5 Triangle Conduit	8.15	10.90
AC5	Carl M & Carol Banta 50 Western Airlines	12.50	25.00
N43	Larry M. Belmont	19.50	19.50
N64	Albert E. Bennett & Evelyn Bennett JT W R O S 25 Western Airlines	12.50	18.75
N72	Albert E. Bennett as cust. for Michael Bennett 12 1/2 Western Airline 15 Burlington Ind.	3.13	7.63
N68	Floyd E. Bettis & Mary J Bettis JT W R O S	14.00	14.00
N136	Edward D. Bevers & Ellen K Bevers JT WROS 10 Carrier Corp	-	2.50
N103	Andrew K. Bills 30 Assoc. Oil & Gas	-	-
AC6	John K. Bishop .18 General Instrument	1,158.00	1,158.00
AC7	Clifford V. Bissell	.80	.80
N51	Charles Booher 25 Boise Cascade 15 Monsanto + stock div. of .3 payable 12/26	5.32	11.31
AC8	Dr.Carl M. Bowman & Anna L. Bowman JR WROS	2.50	2.50

		8/9/67 Corrected Balance	11/15/67 Balance
N5	Floyd H. Boyster & Marjorie G.Boyster	$8,691.36	$ 8,691.36
N90	George G. Brooks	1,233.40	1,233.40
N84	Billy Barton Brown	28.60	28.60
N127	Laverne D. Buller & Thelma L.Buller JTWROS 30 U.S Leasing Corp.	-	1.50
N151	Robert Caffrey & Garen Caffrey JTWROS 145 Northern Consolidated Air Units	2.90	2.90
N70	Frank E. Campbell 15 International Harvester	6.75	13.50
AC17	James & Betty Caraway JTWROS 10 Chrysler Corp. 20 Standard Oil of N.J. 25.5 Mondanto Chemical 300 Strategic Material	1,289.66	1,346.66
AC11	William O. L. Chinn	2.50	2.50
AC14	Sgt. Ralph D. Clukey 100 Anglo Lautera Nitrate 100 Florida Capital Corp.	-	-
AC12	Jerry L. Coleman & Sylvia A JTWROS 20 W. T. Grant	5.50	11.00
AC18	Jerald D. Cowan & Betty L. Cowan JRWROS	7.80	7.80
N46	Barry L. Dadrich 1 1/2 Western Airlines	.38	.76
N135	Ralph C. Davilbiss 300 Arden Mayfair	54.00	54.00
N40	Tonby L. Doma 10.4 Ozark Airlines	-	-
N18	Andrew H. Ecker 20 Sperry Rand	1.00	3.00
N31	Kenneth Fox 20.7 Teledyne Corp	-	-
AC21	Frank R. Foley & Marie J.Foley 50 Crown Zellerbach	27.50	55.00
AC26	Clement Eugene Gill & Joanne Mary Gill JT WROS 20 Admiral Corp. 12 1/2 Western Airlines	3.13	6.26
N102	James J. Goodfellow 2 1/2 Terminal Hudson Electronics	463.50	463.50
N132	Francis H. Grant & Fidelis F.Grant JTWROS 37 McLean Industries 10.2 General Instrument 11 Halliburton Corp.	5.23	10.46

		8/9/67 Corrected Balance	11/15/67 Balance
AC28	Alfred C. Gronnestad & Patricia Gronnestad, JT WROS 10 1/2 Standard Oil of Calif.	$ 6.87	$ 26.24
N7	Charles E. Hardenbrook & Lucille L. Hardenbrook 20 Eastern Airlines 20 American Airlines 25 Ampex Corporation	2.50	13.00
AC30	Rolf Helle & Marie Helle JT WROS	30.00	30.00
N98	Edward Hollier & Joanne Hollier JTWROS 50 Western Airline	12.50	25.00
AC32	Lucille Hendrickson/ Cust. for Barbara	6.00	6.00
AC32A	Lucille Hendrickson	6.00	6.00
N37	Russell Hoehn 50 Halliburton 1 General Instrument	5,320.00	5,343.75
AC33	Russell H. Horton & Verona I. Horton JTWROS 10 1/2 Fluor Corp.	-	-
AC33A	Russell H. Horton as cust. for Larry R.Horton 10 Worthington Corp.	3.75	7.50
N167	William C. Hubbard & Bobbi M. Hubbard JTWROS 1000 Westates Petroleum	-	-
AC37	George M. Janovitz & Hazel N.Janovitz JTWROS	-	3.75
N35	Clarence L. Jeffers 100 Boeing Co, 2 General Instrument Corp.	9,515.00	9,575.00
N52	Francis Martin Koenig & Sharon Dee Koenig	4.50	4.50
N50	Lloyd S. Kurtz, Jr. 10 General Motors	8.50	17.00
N104	Stephen C. LaCaze & Ann B. LaCaze JT WROS	1.00	1.00
AC43	Gene C. Lanzaro 100 Outboard Marine 300 Nuclear Corp 200 Halliburton 2 General Instrument	10,308.65	10,448.65
N38	Kenneth C. Lauster & Jeannette S.Lauster	3.00	3.00
AC42	Thomas T. Luce & Peggy L.Luce JT.WROS	3.25	3.25
AC46	Norman MacDonald,Jr.	6.25	6.25

		8/9/67 Corrected Balance	11/15/67 Balance
AC47	James H. Malone & Maria Malone JT WROS 10 Otis Elevator	$ 20.00	$ 25.00
AC49	Thomas R. Marshall, Jr. 50 Union Oil of California	-	35.00
N115	Theodore J. Meiners 50 Western Airline	12.50	25.00
AC50	Albert F. Meyers & Lucille H. Meyers	6.00	6.00
AC45	Charles W. Monroe & Zelma L.Monroe JTWROS	12.00	12.00
AC52	Royce Harvey Morgan & Eliz.Morgan JtWROS 35 Alaska Airlines 26 Western Airlines	6.50	13.00
AC52A	Eliz.Morgan as cust.for Philip Harvey Morgan - a minor 8 Western Airlines	2.00	4.00
AC52B	Eliz.Morgan as cust. for Royce Morgan, a minor 8 Western Airline	2.00	4.00
AC52C	Royce Harvey Morgan as cust. for Mary Ann Morgan - a minor 8 Western Airlines	2.00	4.00
AC52D	Royce Harvey Morgan, as cust. for Peggy Ann Morgan, a minor 8 Western Airlines	2.00	4.00
AC84	T.Ward Mortensen & Jeri S. Mortinsen 27 1/2 Western Airlines	6.88	13.76
N92	Gerald F. Molitor	1.75	1.75
N96	Diane E. Nash 400 Federal Resources Corp.	-	-
N97	Donald Nash 200 Federal Resources Corp.	-	-
N100	Merris H. Nelson & Orleen L.Nelson JTWROS 50 Airlift International	-	-
AC53	Robert H. Nelson & Lottie M. Nelson JTWROS	13.50	13.50
N143	Edward S.E.Newbury 200 Asamara Oil	-	-
N61	Jack D. O'Brien	5.00	5.00
N19	H.Russell Pace 22 Aloha Airlines	-	-

		8/9/67 Corrected Balance	11/15/67 Balance
N45	Agnes M. Balik 10 Ford Motors	$ -	$ 12.00
N150	Palmer Paterson 4 U S Steel	-	2.40
N71	Elmer E. Potter & Sharon S. Potter JTWROS 5 Texaco 6 B.F.Goodrich 8 R.C.A.	5.20	10.65
N36	Clell L. Prewitt & Mildred A.Prewitt JTWROS 20 Anaconda 15 Western Airlines 10 Cessna Aircraft 10 Cities Service 10 Newmount Mining 10 B.F.Goodrich 10 W.Va.Pulp & Paper 30 Lone Star Gas 10.2 General Instrument	59.65	108.55
AC57	Charles C. Ruch & Lucile L.Ruch JTWROS 20 Allis Chalmers 10 Westinghouse Elec. 10 No.American Aviation 10 Phelps Dodge 20 American Airlines 10 Celenese Corp 10 Borg Warner 10 American Metal Climax 10 Ford Motors	91.25	125.25
AC58A	Barbara J. Putnam as cust. for Scott D. Putnam Minor 3 Western Airlines	.75	1.50
AC60	William H. Radentz & Kathleen C.Radentz 25 Babcock & Wilcox 30 Ethyl Corp 20 Ford Motors 20 Natl Distillers	20.81	75.01
AC62	Daniel M. Platze 20 Du Pont de Nemours	25.00	50.00
AC3	Mona M. Platz 20 Polaroid Corp.	2.00	4.00
AC63A	Billy S. Pimas & Jeannette N.Pimas.JTWROS 10 Union Bag Corp. 10 Cities Service	10.90	10.00
AC65	Billy S. Pimas-cust. for Angela 12 1/2 Western Airlines	3.13	5.26

		8/9/67 Corrected Balance	11/15/67 Balance
AC64	Rachel V. Robertsen 50 Dynamics Corp.of America	$ 5.00	$ 10.00
N99	Robert J. Rodgers as cust. for Candace Rogers **3 Tinker National Bank**	-	-
N152	Emmet Roetman and Gwendelyn Roetman JTWROS 145 Northern Consolidated airlines units	2.90	2.90
N154	Emmett Roetman as cust. for Kristin Roetman 28 Northern Consolidated Airline Units	.56	.56
N153	Emmett Roetman as cust. for Russell Roetman 28 Northern Consolidated Airlines Units	.56	.56
AC66	Jose M. Romano 50 Electronics Capital	-	-
N55	Alfred B. Roney & Frances K. Roney. JTWROS 20 Magnavox Corp.	4.00	8.00
AC67	Kenneth Rountree & Ruth E.Rountree. JTWROS 40 Sperry Rand	12.50	16.50
N63	Harry Schiry 25 Western Airlines	6.25	12.50
AC72A	Jerry P. Smith	2.25	2.25
AC85	William Arthur Smith & Thetus H.Smith JTWROS	2.50	2.50
AC74	Joseph P. Steiner and Cynthia L. Steiner JT WROS 25 Western Airlines	6.25	12.50
AC73	Vitalis Syzzas & Walgroud Szazas JTWROS 10 Communications Satellite 15 Scott Paper 10 Fed. Pacific Electric	3.75	7.50
N122	Felix Swiderski as cust.for Danny Paul Swiderski 50 Alaska Airlines 100 Nuclear Corp.	-	-
N26	Glenn R. Talley 87 1/2 McDonald Douglas Aircraft 50 R C A	6,205.75	6,224.50
N26A	Glenn R.Talley and Susan J.Talley 50 Halliburton Co.	2,359.50	2,383.15
N78	Walter L. Teeuwen	462.00	462.00

		8/9/67 Corrected Balance	11/15/67 Balance
AC82A	Frederick Tilney and Dorothy M.Tilney for benefit of Kathleen G.Tilney 1.975 L I National -- stock dividend 79.000 L.I.National and 302 Tinker	$ 69.35	$ 89.59
AC82B	Frederick Tilney & Dorothy M. Tilney for benefit of Dorothy C. Tilney 1.975 L I National -- stock dividend 79.000 L I National and 91 Tinker	59.35	79.59
AC82C	Frederick Tilney & Dorothy M. Tilney for benefit of Frederick Tilney,Jr. 2.05 L I National -- stock dividend 82.00 L I National and 91 Tinker	41.00	62.01
AC76	Dyoniscio Tingcang and Theordora Tingcang JTWROS	8.75	8.75
N155	Fave E Troy and Nancy Troy 40 Alaska Afrlines	-	-
N94	Ronald Van Eykeren 100 Northern Consol. Airlines 15 R C A	11.50	14.50
N85	Gen.Raymond Walker	10.63	10.63
N114	Billy J Walters & Phyllis Walters JTWROS 10 Alaska Airlines	-	-
N15	Gerald E. Watkins & Jacqualine L. Watkins JTWROS 300 Assoc. Oil & Gas	1.50	1.50
A78	Harold V. Walther & Meryl B. Walther $10M U S Treas 4 7/8 11/15/67	-	-
N9	William C. Weimar & Ida M.Weimer JTWROS 6 Mobile Oil 8 Eastern Airlines	3.70	7.40
N91	Joseph Welch & Robert Merritt	3.50	3.50
AC80	Merle E.Williams 50 Alcan Aluminum	17.50	30.00
N87	August L. Woeltz 133 Airlift International 100 Asamera Oil	-	-
N69	John Wathers 30 Magnavox 15 R C.A 5 Motorola	10.25	17.50

		8/9/67 Corrected Balance	11/15/67 Balance
N105	Horst Bieter	$ 496.29	$ 496.29
N165	Clark DeGarmo	--	679.00
N133	Marvin & Judith Edwards	669.74	669.74
N164	Howard & F. R. Hall	298.00	298.00
N108	Walter L. Clark	102.40	102.40
N134	Richard Maytum	354.00	354.00
AC54	McKenzie Musick	4.68	4.68
N160	David Garrish Norton	40.44	40.44
AC68	Richard Sassara	1,298.98	1,298.98
AC69	Lauren Saunders	1,550.69	1,550.69
N166	Estate of C. H. Tilney	680.00	680.00
N162	Ronald & Ellen Willequer	902.12	902.12
AC81	Jerry L. Winn	6,001.50	6,001.50
	Total 11/15/67	$61,888.58	$63,182.82
A 78	Harold V. Walther & Beryle B. Walther Treasury securities matured	--	10,243.75
	Total 11/17/67		$73,426.57

SCHEDULE 13

TILNEY & COMPANY

MISCELLANEOUS LIABILITIES AND TAXES

Federal, Second Quarter, Withholding & FOAB with penalties estimated	$ 1,375.00
Miscellaneous taxes for 2nd quarter, estimated	500.00
Federal, July & August, Withholding and FOAB, estimated	700.00
N.Y. State Income Tax, Withholding, July and August	85.00
N.Y. Unemployment Insurance, July and August, estimated	25.00
Miscellaneous, N.Y.C., etc., estimated	250.00
	$ 2,935.00

SCHEDULE 14

TILNEY & COMPANY

DUE BROKERS

Tilney & Company owes only one broker -- Francis I. duPont & Co. -- $2,461.41.

This obligation will be an offset to an error or covered by the Rico obligation referred to in Schedule 3.

C
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Y

TILNEY & COMPANY, INC.
47 West Nicholai Street
Hicksville, N. Y. 11801

February 10, 1970

Robert G. Benisch, Esq.
Berman, Paley, Goldstein & Berman
10 East 40th Street
New York, N. Y. 10016

Dear Mr. Benisch:

I would like to confirm the conversation we had this morning regarding the closing of the Receivership of Tilney & Company and Frederick Tilney. It would appear to me that we have five classes of creditors involved in this estate and, for the sake of simplicity, I will list them as:

(1) General cash creditors including customers of Tilney & Company, vendors, public utilities, etc. The total amount due this group of creditors is $235,000 of which about $5,000 is due to customers and others who have not filed claims and who have to be sought after to give them their money.

(2) The claim of the Marine Midland Tinker National Bank which bank has agreed to accept a certain piece of real property not carried at any value in the receivers' figures and waive all claim against the Receivership in exchange for this property which when sold by the bank will permit a reversion to Tilney Construction Corporation, Inc., the actual owner, of any excess money realized.

(3) The claims of my children and of Mrs. Tilney as well as a small claim of the estate of Camilla H. Tilney. All of these claims can be covered by an exchange of assets similar to the arrangement made with Marine Midland Tinker National Bank.

(4) Claims which we contend are against Tilney & Company, Inc., which has securities in the possession of the Receiver of a value equivalent to the amount of the claims.

(5) Administration expenses of the estate for which you suggested using an outside figure of $100,000. To date bills have been submitted to the Receiver of approximately $8,000 which would be chargeable to the total amount.

It, therefore, appears at this time that the total amount of the cash claims is $235,000, and with administration expenses $335,000 will be needed. At present the cash available in the hands of the Receiver will consist on

EXHIBIT C
TO AFF. 3/16/74
67 CIV. 4676

April 28, 1970 of $260,000 U.S. Treasury Bills maturing that date plus miscellaneous additional items including a contribution of the Marine Midland Tinker National Bank under their application which will total in the neighborhood of $15,000 including cash surrender value on the partners' life insurance policies. The total cash assets would, therefore, amount to approximately $275,000 including some accrued interest.

The cash gap, therefore, would amount to $60,000. I am specifically disregarding any reference to the cash of about $34,000 and remaining Tilney & Company securities, to wit 740 shares of Matanuska Valley Bank stock worth approximately $21,000 for a total of $55,000, at the Long Island National Bank. I have also eliminated reference to about 1,000 shares of Matanuska Valley Bank stock held free by the Receiver as well as all of the securities of City Commerce Corporation. The 1,000 shares of Matanuska Valley Bank stock as demonstrated by the Receiver's recent sale is worth at least $30,000 and the City Commerce, in my opinion which I believe is now shared by Mr. Hogan, should bring about $75,000 if sold. In addition, the Receiver holds valuable properties in Anchorage, Alaska, on which an appraisal was recently received of $45,000 according to testimony in Court. The sum of these three asset items alone would amount to $150,000.

In regard to the children's claims and Mrs. Tilney's, all other assets of the Receivership including stock and notes of Governmental Statistical Corporation held by the Receiver plus real property such as Sundown, adjacent lots, other lands as well as other corporate stocks would be available to secure Mrs. Tilney and the children quite adequately without disturbing their position through the expunging of their claims which have been appropriately filed. We know of no opposition to the children's claims which could validly be supported. All cash creditors will be paid in full with some minor adjustments which I have to discuss with you, and the Marine Midland Tinker National Bank, the largest creditor next to the family, will be satisfied.

It would appear to me that continual actions of litigation are pointless and will waste my assets. Under the circumstances, I am requesting you and Mr. Hogan to desist from further actions against Governmental Statistical Corporation and the Long Island National Bank.

In closing, I would like to indicate the the Long Island National Bank has indicated to me that they are willing to continue their relationship with Governmental Statistical Corporation and with the Matanuska Valley Bank stock together with the cash of Tilney & Company their loan would be secured by cash and marketable securities without regard to the actual collateral of the Alaska State Development Corporation 4% $95,000 Note due 8/1/73.

I anticipate that with this matter speedily closed, I will be able to make some very substantial recoveries through litigation which will improve my asset position. In the meantime, I am very anxious to protect Dorothy and the children from all points of view including gift taxes and the like. Since I am

admitting all of my debts with minor adjusting to be discussed, I see no valid reason why all of the family claims which I admit should not be covered by an exchange of assets and all customers and creditors not receive their money promptly.

Very truly yours,

Frederick Tilney

FT/as

cc: Joseph C. Hogan, Esq.
Franklin Ormsten, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	
v.	67 Civ. 4676
TILNEY & COMPANY, FREDERICK TILNEY, Defendants.	

TIME OF EX-RECEIVER, RECEIVER, COUNSEL AND ACCOUNTANTS RECORDED IN CONNECTION WITH THE PREPARATION OF APPLICATIONS FOR ALLOWANCES OR WORK RELATED THERETO - NOT COMPENSABLE

Pages 1 through 5

Total Time to be Eliminated --- 203.05 Hours

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TIME OF EX-RECEIVER, RECEIVER, COUNSEL AND ACCOUNTANTS RECORDED IN CONNECTION WITH THE ORIGINAL AND SUBSEQUENT LIQUIDATION OF THE EFFECTIVE CONTROL OF THE WADDINGTON BANK

Pages 6 through 8

Total Time to be Eliminated	--- 53.05 Hours
Total Time to be Charged against I. Alan Harris	--- 218.50 Hours
Total	271.55 Hours

EXHIBIT D
TO AFF. 3/16/74
67 CIV. 4676

TIME OF EX-RECEIVER, RECEIVER, COUNSEL AND ACCOUNTANTS RECORDED IN CONNECTION WITH THE PREPARATION OF APPLICATIONS FOR ALLOWANCES OR WORK RELATED THERETO - NOT COMPENSABLE

Date		Description	Time allocated to allowances	
1969				
2-19	C. Benisch.	Conf. at Harris' office	3.50	(1)
2-19	R. Harris.	Conf. and meeting with Hogan, Benisch & Tilney	3.50	(1)
	R. Hogan.	Meeting Harris' office, Benisch	3.50	(1)
2-25	C. Benisch.	Phone FT	1.25	(1)
2-26	C. Benisch	Phone FT	.5	(1)
2-28	C. Benisch.	Phone FT	.5	(1)
4-1	C. Benisch.	Conf. F Tilney, Harris & Hogan re general matters	3.0	(2)
	R. Harris.	Conf. and meeting with Hogan Benisch & Tilney	3.0	(2)
	R. Hogan.	Conf. Harris and Benisch	3.0	(2)
7-18	R. Harris.	Phone conf. with Benisch	.5	
	C. Benisch.	Research re: allowances; phone Harris	.5 e	
7-21	C. Benisch.	Prepare affidavit re: legal administration expenses.	1.25	
7-22	C. Benisch.	Work on affidavit and time sheets on legal fees	1.5	
7-23	C. Benisch.	Review of F Tilney papers prepared for submission in Court	.5 e	
	R. Hogan.	Tilney correspondence	.25 e	
8-1	C. Benisch.	Draft portion of application for allowance	3.0	
8-7	C. Benisch.	Work on application for allowance	1.5	
8-11	C. Benisch.	Work on application for allowance	2.0	
8-12	C. Benisch.	Work on application for allowance	1.0	
8-18	R. Hogan.	Corres. Tilney; conf. Benisch	1.5 e	
8-20	C. Benisch.	Work on draft of application for allowance	3.5	
9-4	C. Benisch.	Trip to conf. at Tinker National Bank re: receivers loan proposal	4.0 e	(3)
	R. Hogan.	Discussion Tinker Bank in East Setauket, Benisch, Gunnigle	4.0 e	(3)
11-7	C. Benisch.	Work on draft of application for allowance	3.0	
11-12	C. Quillinan.	Conf. Messrs. Hogan, Greidinger, Klein, Benisch, re: statis of liquidation; proposal of Tinker	1.75 e	
	C. Benisch.	Conf. Hogan, Quillinan, Klein & Greidinger	1.75 e	
	R. Hogan.	Meeting Wagner's office, Quillinan, Klein & Greidinger, Benisch and self	1.75 e	
	A. Greidinger.	Conf. receiver and counsel	1.75 e	
	A. Klein.	Conf. receivers and counsel	1.75 e	
11-24	C. Benisch.	Prepare stipulation extending time to file of application for allowances	.5	
11-25	C. Benisch.	Phone Mr. Ormsten of SEC re: stipulation on applications	.25 e	
11-28	C. Benisch.	Phone Mr. Ormsten	.25	
		TOTAL HOURS, 1969	59.50	
1970				
1-5	C. Benisch.	Phone Hogan re: meeting Thursday; phone Tilney re meeting	.5	(4)
1-8	C. Benisch.	Attend meeting at Hogan's office with Dr. Greidinger, Klein, Hogan, Ormsten of SEC and Mr. and Mrs. Tilney re: Tilney proposal for winding up receivership	4.0 e	(4)
	A. Greidinger.	Receiver and counsel, conference	4.0	(4)
	A. Klein.	Receiver and counsel, conference	3.5	(4)
1-9	C. Benisch.	Review of figures of meeting 1-8-70 and feasibility thereof. Conf. with Mr. Quillinan re: recent receivership developments	3.0	(4)
	C. Higgins.	Conf. Mr. Quillinan re: outcome of meeting of receiver yesterday and whether to start supplementary proceeding	.25	(4)
	R. Hogan.	Meeting office Klein, Benisch, Tilney, Ormsten, re: proposal of Mrs. Tilney	4.0	(4)
1-12	C. Benisch.	Phone with Hogan re applications for allowances	.25 e	(4)
1-21	C. Benisch.	Work on interim application for allowance	1.0	
1-23	C. Benisch.	Work on application for allowances	2.5	
1-26	C. Benisch.	Work on interim application for allowance	1.5	
1-27	C. Benisch.	Work on application for interim allowances	.5	
2-4	C. Benisch.	Worked on application for allowance of claims	1.0	

4-1	R. Hogan.	Work on Tilney draft for interim allowances	4.0	
4-3	R. Hogan.	Work on Tilney interim allowance	3.0	
4-15	R. Hogan.	Study Greidinger interim report	1.0	
4-16	C. Quillinan.	Research re notice and procedure on application for allowance. Telephone Mr. Benisch re: same	1.0	
4-23	C. Quillinan.	Tel. Mr. Benisch re procedure on application for allowance	.15	e
5-19	C. Benisch.	Phone conf. Mr. Ornsten of SEC re examination of time records	.25	
5-20	R. Hogan.	Tel. call, Ornsten, re appointment to check time records	.25	
5-21	C. Benisch.	Meeting with S.E.C.	1.0	
5-22	C. Benisch.	Phone conf. with Mr. Hogan re general matters, advertising, date for fixing allowances	.50	e
	R. Hogan.	Tel. discussion, Benisch	.25	e
6-4	A. Klein.	Meeting SEC, Fees	1.0	
6-17	C. Benisch.	Conf. with Mr. Ornsten of the SEC	1.5	
7-2	R. Hogan.	Frank Ornsten called re: meeting with Clark at CWT	.25	
7-17	R. Hogan.	Checking with I.N.A. re Tilney Bond	2.0	(5)
7-20	R. Hogan.	Kelly I.N.A. re Tilney Bond; tel. conversation Klein, Gunnigle and Benisch re Bond	1.5	(5) (5)
	C. Benisch.	Phone conf. with Mr. Hogan	.25	(5)
7-21	R. Hogan.	Killian I.N.A. re: brokers bond	.25	(5)
7-27	C. Benisch.	Drafted Notice of Application for fixing of allowances. Phone conf. with Mr. Quillinan	.75	
7-31	A. Klein.	S.E.C. Analysis of Time	5.0	
8-31	C. Quillinan.	Conf.. Mr. Benisch re: application for allowances	.25	e
9-1	C. Quillinan.	Conf. Mr. Benisch re: application for allowances	.25	e
	A. Klein.	S.E.C. Analysis of Time	5.0	
9-2	A. Klein.	S.E.C. Analysis of Time	2.0	
9-8	A. Klein.	Meeting SEC, Time, CWT (should be 9/3)	3.5	
9-21	C. Benisch.	Petition and Order re: application for allowances	.25	e
10-5	C. Mulligan.	In Court 3 1/4 hours	1.0	e
	R. Hogan.	Court appearance-Federal Court- re: interim allowances and notice to creditors (2 hrs.)	1.0	e
10-7	C. Benisch.	Phone conf. with Mr. Ornsten re: SEC position on applications for allowances; phone conf. with Judge Edelstein re: same	.75	
	C. Mulligan.	Tel. conf. Mr. Ornsten of SEC re: hearing on allowances. Tel. conf. Mr. Benisch re above call	.25	
10-8	C. Mulligan.	Research re: interim allowances	.10	e
	R. Hogan.	Discussion Benisch re: SEC Order to Show Cause opposing interim fee	1.0	
10-9	C. Mulligan.	Research on memo re: interim allowances. Conf. Mr. Quillinan re: same	.5	
10-13	C. Mulligan.	Interim allowances; research for memo	3.5	
10-14	C. Mulligan.	Tel conf. Mr. Benisch re: interim allowances. Research for memo re: interim allowances	3.5	
	C. Benisch.	Phone conf. with Mr. Mulligan and Mr. Hogan	4.25	
	R. Hogan.	Discussion Greidinger, Benisch re: Order To Show Cause	.25	
10-15	C. Benisch.	Attended hearing in Court re: application for allowances	.5	
	R. Hogan.	Hearing Federal Court re: application for fees	2.5	
	A. Greidinger.	Court	2.0	
10-16	C. Benisch.	Phone conferences with Mr. Quillinan and Mr. Hogan re: applications	2.0	
10-19	C. Wagner.	Conf. with Mr. Quillinan	.5	
	C. Quillinan.	Tel. conf. Mr. Benisch re: SEC motion on applications for allowances; conf. Mr. Wagner re: same	.5	
	C. Benisch.	Phone. conferences with Mr. Hogan, Mr. Harris, SEC	.75	
10-20	C. Benisch.	Phone conf. with Mr. Hogan and with Court regarding application for allowance	.5	
10-23	C. Benisch.	Dictated affidavit and notice re: withdrawal of application for order fixing allowances	.5	
		TOTAL HOURS, 1970	67.90	
1971				
1-6	C. Mulligan.	Time sheets for Tilney matter; conf. Mr. Quillinan	1.5	
1-8	R. Hogan.	Tel. conf. Benisch re meeting with Clark	.25	e
1-8	C. Benisch.	Phone conferences with Mr. Gilheany & Mr. Hogan re: meeting on Monday	.25	e

1-11	C. Benisch.	Conferences with Mr. Hogan, Mr. Clark, Mr. Gilheany re: termination of receivership; phone conf. with Mr. Quillinan re motion to terminate	4.5	(6)
	R. Hogan.	Conf. Benisch, Clark and Gilheany	3.5	(6)
1-14	A. Klein.	Correspondence	2.0	(7)
1-18	C. Benisch.	Phone conferences with Mr. Hogan and Mr. Klein re: motion to terminate	.5	(6)
1-21	C. Benisch.	Worked on papers in opposition to motion to terminate.	1.5	(6)
1-22	C. Benisch.	Worked on affidavit in opposition to motion to terminate;phone conferences with Mr. Klein, Mr. Gilheany, Mr. Mulligan	4.5	(6)
1-25	C. Quillinan.	Conf. Mr. Benisch, Mr. Mulligan re: motion to terminate receivership; preparation of answering affidavit	1.0 e	(6)
1-25	C. Benisch.	Conferred with Mr. Quillinan, Mr. Mulligan re: OSC Nassau and re: affidavit in opposition to motion to terminate receivership; drafted final form of affidavit	2.5	(6)
1-29	C. Wagner.	Appearance in Federal Court, Room 618	1.75 e	(8)
	C. Benisch.	Appearance at Federal Court re: Tilney motion	1.75 e	(8)
	A. Greidinger.	Court Hearing	1.75 e	(8)
	A. Klein.	Court Hearing	1.75 e	(8)
	C. Mulligan.	Tel. conf. Mr. Benisch re: hearing this afternoon (on motion to terminate this receivership)	.15 e	(8)
2-1	C. Wagner.	Conf. with Mr. Quillinan re: motion to terminate	.25	
	C. Quillinan.	Conf. Mr. Wagner re: motion to terminate	.25	
2-2	C. Quillinan.	Tel. conf. Mr. Benisch re: motion to terminate	.25	
	C. Benisch.	Phone conf. with Mr. Quillinan re bonding proposal	.75	
2-8	C. Benisch.	Phone conf. with Mr. Gilheany re: bond	.25 e	
2-11	C. Quillinan.	Tel. conf. Mr. Benisch re: bond for expenses	.25	
2-16	R. Hogan.	Tel. conf. re: Tilney Bond, Benisch	.75	
2-24	R. Hogan.	Tel. Gilheany re: bond	.25 e	
3-2	R. Hogan.	Call Tilney re: bond	.25 e	
3-3	R. Hogan.	Tel. conf. Greidinger re: bond	.25 e	
3-9	C. Mulligan.	Tel conf. Mr. I. Alan Harris re: status of entire matter	.25	
3-15	C. Quillinan.	Conf. Mr. Mulligan re: bond for expenses	.25 e	
	C. Mulligan.	Conf. Mr. Quillinan re: bond, etc.	.25	
3-16	R. Hogan.	Tel. conf. Mulligan re: Tilney bond	.25	
3-18	C. Quillinan.	Tel. Mr. Hogan re: bond	.25	
	R. Hogan.	Tel. conf. Quillinan re: bond	.25	
3-19	C. Quillinan.	Conf. Mr. Wagner re: distribution to creditors and re: bond	.25	
	C. Wagner.	Conf. with Mr. Quillinan	.25	
	C. Mulligan.	Two conferences Mr. Quillinan, 2 tel. conf's Mr. Gilheany	.5	
3-22	C. Benisch.	Phone conf. with Messrs. Mulligan & Quillinan re: status and procedures on partial dist. to creditors etc.	.5 e	
	C. Mulligan.	2 tel. conferences Mr. Benisch re: meeting	.25 e	
3-23	R. Hogan.	Conf. Wallace, Blaikie at Fidelity & Deposit re bond	1.0	
3-25	R. Hogan.	Conf. Blaikie, Henderson, Wallace at Fidelity & Deposit re: bond	2.0	
3-31	C. Quillinan.	Tel. Mr. Benisch re: motion to terminate receivership	.25	
4-6	R. Hogan.	Conf. Benisch re: Walter to secure bond	.5	
6-17	R. Hogan.	Discussion, Ormsten, about hardship fees	.10 e	
8-19	C. Quillinan.	Telephone conference Mr. Hogan re procedure on hearing 9/8/71 re possible interim allowances - Telephone conference Mr. Benisch re hearing 9/8/71	.75 e	(9)
	C. Benisch.	Phone conferences with Mr. Quillinan and Mr. Ormsten	.50 e	(9)
	R. Hogan.	Telephone discussion, Benisch, Mulligan and Quillinan	.50 e	(9)
9-8	C. Wagner.	Appearance in Federal Court (Rm 618) re application approval of creditors' claims and payment to creditors	2.00 e	(9)
	C. Benisch.	Appearance at Federal Court on application for payment to creditors. Phone conference with Mr. Quillinan re meeting concerning allowances.	2.00 e	(9)
	R. Hogan.	Court appearance, Tilney, re distribution	2.00 e	(9)
	A. Greidinger.	Court Hearing	2.00 e	(9)
	A. Klein.	Court Hearing	2.00 e	(9)
	A. Hanrahan.	Court Hearing	2.00 e	(9)
	C. Benisch.	Phone conference with Mr. Ormsten, Mr. Hogan, Mr. Janvey re tomorrow's meeting	.50	(9)

9-9	C. Benisch.	Phone conference with Mr. Ornsten, Mr. Hogan, Mr. Janvey re tomorrow's meeting	.50 (9)
11-10	C. Mulligan.	Conf. Mr. Quillinan and Mr. R. F. Wagner re balance held by Mr. Hogan and general matters	.50 e
	C. Wagner.	Conference with Mulligan and Quillinan	.50
11-29	C. Mulligan.	Conf. Mr. Quillinan re application for allowances	.25
12-13	C. Mulligan.	Conf. Mr. Quillinan re allowances	.15 e
12-22	C. Mulligan.	Conf. Mr. Quillinan re allowances	.15 e
		TOTAL HOURS, 1971	56.05
		TOTAL HOURS, 1967 THROUGH 1971 IN CONNECTION WITH ALLOWANCES (For breakdown, see note (10), page 5 of this Exhibit)	203.05

Notes

e. Estimated time; not specifically noted in applicant's time record; generally being a portion of a total period.

(1) In late December 1968, defendants arranged to settle the matter of a spurious suit of the City of Nome, Alaska, against the defendants, Governmental Statistical Corporation and defendant's wife and limited partner, Dorothy M. Tilney in the total amount of $4 million. This suit, no matter how worthless, had to be settled in order to permit a distribution to public customer creditors and other creditors. The suit was settled by Mr. Tilney's attendance at a meeting in Anchorage in December 1968 at which time the receivers were notified that the receivership could be immediately closed provided allowances were estimated immediately.

As of that date, the receivers had distributed claim forms to all creditors in a letter dated October 31, 1968, but actually mailed December 17, 1968 which included a financial statement as of July 31, 1968 when many important issues were still unresolved but had been resolved at the time of mailing.

The various conferences and meetings, phone calls, in February 1969 were related to defendant's effort to obtain a workable estimate on the cost of administration.

(2) An additional meeting was held on April 1, 1969 to discuss the closing of the receivership and the establishment of allowances.

(3) Messrs. Hogan and Benisch made a trip to the Marine Midland Tinker National Bank, East Setauket, N. Y., where a meeting was held with the President of the bank in an effort to arrange a loan which would have permitted the immediate payment of their allowances not yet submitted but which were being estimated at astronomical figures in conversation with defendant in the early part of 1969.

(4) Defendants held a meeting with Receiver Hogan, counsel and accountants at which Mr. Ornsten of the S.E.C. was present. The meeting was entirely devoted to discussions as to allowances and the fact that these were priority claims over and above public investor creditors and other creditors. At this meeting, defendant offered to pledge his home pending the legal establishment of the allowances provided all creditors were paid at once.

(5) Exploration of possibility of broker's fraud bond making funds available which could cover allowances.

(6) The motion to terminate the receivership was filed in December 1970 and specifically bore on the matter of allowances

(7) While accountant lists time as correspondence, it is believed that the time was probably involved with the matter to terminate and establish allowances.

(8) A hearing was held before Hon. David N. Edelstein on January 29, 1971 at which hearing Receiver Hogan was not present. The hearing which consumed about 3 1/2 to 4 hours was devoted to the discussion of the available cash for the payment of creditors' claims and to defendants arranging a bond to assure the payment of allowances. Receiver Hogan through his counsel indicated that not more than 40% could be paid on creditors' claims at that time but the Court overruled this position and, backed by the accountants, set figure at 65%. The hearing then turned to the matter of a bond.

With Judge Edelstein out of the Court, the amount of the bond for allowances was discussed, The receivership group sought a bond of $350,000 with the defendants indicating they could not raise any such amount or was any such amount necessary. Finally in order to expedite the closing of the matter and the distribution to creditors, defendants agreed to attempt to seek a bond of $250,000. Returning to the Courtroom, Judge Edelstein arbitrated the matter at $300,000.

A very substantial portion of this hearing was devoted to the matter of allowances which were involved with the motion to terminate. Counsel for creditors presented an affidavit supporting the motion to terminate and in addition to surcharge the receivership $500,000. The creditors' surcharge pointed out that the continuation of the receivership had become a vicious circle with delay, piling fee time on top of fee time, in a never-ending manner. This position was shared by not only the creditors filing the surcharge but by a wide range of public customer creditors who over the years had communicated their feelings to their legislative representatives, the Commission, the Court and the receivers most vehemently.

(9) After the 65% distribution had been made by the receiver on June 14, 1971 to the bulk of the public customer creditors by number, the receiver immediately moved for 100% distribution even though no bond had been obtained to cover allowances. This motion, dated August 31, 1971, must have been underway for at least six to eight weeks and must have started almost as soon as the 65% payment had been mailed. This motion was heard on September 8, 1971 and moved to fruition on October 6, 1971 when the order for 100% distribution was signed. Payment was made on October 20, 1971 to all but a few creditors.

At the hearing on September 8, 1971, which had been preceded by a number of telephone conferences in August, the matter of allowances came up for detailed discussion before the Court. On page 45 of the transcript of the hearing of September 8, 1971, the Court raised the question of final fee applications since "it would appear that the estate is close to being wound up". The continuing discussion in Court revolved around interest and the valuation of the remaining assets to cover fees. In order to expedite the matter, the Court, page 51, line 4, stated:

> "Under those circumstances I would suggest that all of you participate in this conference and see if you can arrive at some agreement concerning administration expenses and then we will have definite targets in mind and determine whether any further liquidation should be made."

Mr. Hogan responded:

> "The figures you have been given are most inaccurate. 7-1/2 percent interest will amount to over $300,000. I, as the Receiver, have about $325,000, so I have $25,000 over interest and payment to the claimants. Counsel mentions $150,000, $200,000. His figures are absolutely erroneous. We have to continue to liquidate".

After further discussion, it was suggested that a meeting for the specific purpose of establishing an agreement on the administration expenses be held and the Court set it down for the following day which was amended and it was mutually agreed that the meeting take place on September 10, Room 618, U.S. Courthouse, Foley Square. Judge Edelstein indicated the Courtroom would be available for the meeting. On September 9, 1971, counsel discovered that such a meeting might be construed as being in violation of Chapter 18, Section 155, of the U.S. Code. The meeting was never held.

(10) Breakdown of hours devoted by receivership personnel to matters in connection with own allowances:

	Hours	Rate	Total Allowance to be Deleted
Ex-receiver Harris	7.00 *	$40.476	$ 283.33
Receiver Hotan	46.35	40.740	1,888.30
Counsel:			
Partners	12.90	49.500	638.56
Robert Benisch, Esq.	78.00	32.515	2,536.17
Other Attorneys	17.80	25.300	450.35
Accountants			
Partners	39.00	33.000	1,287.00
Supervisory Senior	2.00	19.800	39.60
Total	203.05		$7,123.31

* Commission in Response deleted 40 hours of block time for allowances in addition to above.

TIME OF EX-RECEIVER, RECEIVER AND COUNSEL RECORDED IN CONNECTION WITH THE ORIGINAL LIQUIDATION OF THE EFFECTIVE CONTROL OF THE WADDINGTON BANK DURING 1968

Date	Description	Time Allocated to Waddington	
1/10	R. Hogan. Checking Waddington Bank stock	1.00	•
1/11	R. Harris. Correspondence to The Waddington Bank	2.00	•
2/27	R. Harris. Evening meeting and negotiations with Jack H. Studley re solicitation of bids for purchase of securities.	1.00	
3/18	C. Quillinan. Conf. with Mr. Benisch re Waddington Bank stock matter of advertising for bids.	.50	
	C. Benisch. Phone Harris re: general matters (see above)	.50	•
3/20	C. Quillinan. Conf. Mr. Benisch re Waddington bank stock.	.25	•
3/28	C. Quillinan. Conf. Mr. Benisch re liquidation of Waddington bank stock.	.50	•
3/29	C. Quillinan. Examining statement of Waddington bank.	.50	•
4/1	R. Harris. Negotiations with Studley for solicitation of bid for purchase of securities.	.80	
4/8	R. Harris. Telephone to Henry Howard, Esq. in Waddington, N.Y. re solicitation of bid for purchase of stock of The Waddington Bank (spoke to Sec'y.)	.10	
4/9	R. Harris. Phone to Henry Howard re solicitation of bid for purchase of stock of The Waddington Bank.	.50	
4/24	C. Quillinan. Tel. conf. Mr. Rourke of Troy, N.Y. re Waddington Bank stock	.25	
4/26	C. Quillinan. Tel. conf. Mr. Rourke re Waddington bank stock; Tel. Mr. Harris re same; Letter to Mr. Rourke with copy of Waddington statement.	.50	•
5/27	R. Harris. Phone from Tilney re Waddington Bank	3.00	• (1
5/29	C. Benisch. Meeting at Harris' office Hogan, Tilney re: general situation.	3.00	(?
	R. Harris. Phone to Mr. Faherty of Blythe & Co. re disputed sale of stock of The Waddington Bank at $47 per share.	3.50	(?
	R. Hogan. Meeting Harris office, Benisch, Mr. & Mrs. Tilney	4.00	(?
5/31	R. Harris. Phone to Faherty.	.30	
6/5	R. Harris. Phone to Mr. Faherty.	.20	
6/11	C. Benisch. Meeting with Harris	2.20	•
	R. Harris. Phone to Hogan; phone to Blythe & Co. re stock of The Waddington Bank and phones from Tilney. Conference with Benisch.	2.20	•
7/9	R. Harris. Phone to Studley re proposed sale of stock of The Waddington Bank.	.30	•
7/11	R. Hogan. Sale, Waddington stock.	1.00	•
7/12	R. Harris. Prepare agreement re sale of stock of The Waddington Bank.	.50	
	TOTAL HOURS, 1968	28.60	

(1) From the inception of the receivership, defendant had indicated that appraisals should be made. Receivers and counsel persisted in trying to liquidate valuable personalty of a special nature through ordinary brokerage channels, jeopardizing value, and defendant protested vigorously on procedure.

(2) This meeting was spent exclusively on trying to unravel the tangled Waddington affair and the disputed sale to Blyth & Company.

SUBSEQUENT RESALE
1969 - 1970

5/27	R. Hogan. Discussion, Tilney and Harris	1.00	
5/28	C. Benisch. Conf. Harris, Hogan, Tilney.	5.00	
	R. Harris. Conference and meeting with Hogan, Benisch and Mr. and Mrs. Tilney. Conference with Hogan and B...ch and then Benisch	4.30	
	R. Hogan. Conference Harris office, Benisch, Mr. & Mrs. Tilney	6.00	
6/2	R. Harris. Phones to Benisch; phone to Judge Edelstein.	.60	
6/3	C. Benisch. Meeting Harris.	1.50	
	R. Harris. Conference with Judge Edelstein at Chambers. Conference with Benisch. Analysis and review of documents and files; preparation for conference at court.	6.00	

6/4	R. Harris.	Phone from Judge Edelstein re conference; phone to Benisch. Phone to Hogan. Phones to Benisch and Hogan.	1.00	e
6/5	C. Benisch.	Conf. at Court - re: Waddington Bank Matter.	4.00	
	R. Harris.	Conference at court, and continuing conference with Hogan and Benisch.	4.00	
	R. Hogan.	Conference Mr. and Mrs. Tilney, office; conference Waddington, court.	6.00	
6/9	C. Quillinan.	Telephone conference Mr. Benisch re Waddington; Telephone conference Mr. Tilney re Waddington Bank.	.50	e
	C. Benisch.	Phone Quillinan re: Court hearing on Waddington.	.25	
6/10	R. Harris.	Conference with Hogan; phone to Benisch.	1.70	
6/11	R. Harris..	Phone conference from Benisch.	.70	
6/19	C. Benisch.	Phone Harris and Hogan re: meeting with F.T.	.50	
	P. Harris.	Conference at Hogan's office with Tilney.	2.20	
6/26	C. Benisch.	Hearing in Federal Court.	3.00	e
	R. Harris.	Attendance at conference at Federal Court. Conference with Benisch.	2.50	
	R. Hogan.	Hearing, Judge Edelstein.	3.00	e
	A. Klein.	Court hearing.	2.00	e
7/1	C. Benisch.	Research - memorandum of law on children's claims	2.00	
	R. Hogan.	Conference, Benisch, re Harris resignation.	2.00	
7/3	C. Quillinan.	Examining minutes of hearing, 6/5/69.	.75	
	C. Benisch.	Phone Harris - Re: offer to return Waddington stock. Review of stenographic minutes of June 26 hearing. Letters to SEC, Hogan and Tilney re: Studley proposal.	1.50	
	R. Harris.	Review transcript of 6/26/69.	.40	e
7/4	A. Zahl.	Home work for meeting.	4.00	
7/5	R. Hogan.	Study Tilney, Studley Waddington stock	1.00	
7/7	C. Quillinan.	Examining minutes of hearing on 6/5/69.	.50	
	C. Benisch.	Conf. with Hogan, Harris and Greidinger, Submit Order to Judge Edelstein.	3.00	e
	R. Harris.	Trip to Hogan's office and conference and meeting with Hogan, Benisch, Greidinger, Klein & Zahl.	2.70	
	R. Hogan.	Tilney matters, conference Benisch, Greidinger, Harris.	2.70	
	A. Greidinger.	Conference - receiver and counsel.	2.70	
	A. Klein.	Conference - receivers and counsel.	2.70	
	A. Zahl.	Meeting, report for Court	2.70	
7/8	C. Wagner.	Conference Mr. Quillinan re hearing schedule for 7/16/69	.25	e
	C. Quillinan.	Conf. Mr. Wagner in preparation for hearing on 7/16/69	.25	e
7/9	C. Benisch.	Phone Ormsten, S.E.C. re Waddington proposal and postponement of hearing.	.25	
7/10	C. Benisch.	Phone Ormsten S.E.C. re: Waddington proposal, Phone Harris re Waddington.	1.00	
	R. Harris.	Phone conference from Benisch.	.50	
7/11	C. Quillinan.	Examining minutes of hearing 6/26/69.	.75	e
7/14	C. Wagner.	Examination of minutes of hearings held on 6/5/69 and 6/26/69; conference Mr. Quillinan re hearing scheduled for 7/16/69.	1.50	
	C. Quillinan.	Conf. Mr. Wagner re hearing of 7/16/69.	.50	
	C. Benisch.	Work on order accepting Harris withdrawal	1.50	e
	R. Harris.	Phone conference from Benisch.	.25	e
7/15	C. Benisch.	Conf. Hogan, Tilney and Greidinger	1.00	e
	R. Hogan.	Conference Benisch re sale	1.00	e
7/16	C. Wagner.	Conference Mr. Benisch and attendance at hearing before Judge Edelstein.	1.00	e
	C. Benisch.	Attendance at hearing, Fed. Court	2.00	e
	R. Harris.	Attendance at hearing in Federal Court.	2.00	e
	R. Hogan.	Hearing Federal Court, Judge Edelstein, Benisch, Mr. and Mrs. Tilney.	2.00	e
	A. Greidinger.	Court hearing.	2.00	e
	A. Klein.	Court hearing.	2.00	e
	A. Zahl.	Court hearing	2.00	e
7/18	C. Benisch.	Phone Harris re Waddington Stock.	.50	e
	R. Harris.	Phone conference with Benisch.	.50	e
7/21	R. Hogan.	Phone conference Tilney, conference Benisch, Waddington conference, Harris.	1.50	
7/22	C. Quillinan.	Conf. Mr. Benisch re hearing 7/24/69 and re motion for authority to sell securities at auction - checking statutory requirements.	.75	
	C. Benisch.	Phone from F.T.; Phone Hogan, Harris.	.75	e
	R. Harris.	Phones to Judge Edelstein, Benisch and Hogan.	.50	e
7/23	C. Benisch.	Conference Judge Edelstein, Hogan & Harris.	3.00	e
	R. Harris.	Conference at Chambers with Judge Edelstein, Hogan and Benisch. Review files and preparation of receipt for securities.	6.00	

7/23	R. Hogan.	Conference, Federal Court.	3.00	e
7/24	C. Benisch.	Appearance at Federal Court Hearing.	2.50	e
	R. Harris.	Attendance at hearing at Federal Court.	2.50	
	R. Hogan.	Hearing Federal Court, Judge Edelstein.	2.50	e
	A. Greidinger.	Court hearing.	2.50	
	A. Klein.	Court hearing.	2.50	e
7/25	C. Benisch.	Letters to various banking agencies re: auction sale of Waddington stock. Phone F.T. (Twice).	1.25	
	R. Harris.	Advice as to New York Banking Law re public sale of stock of The Waddington Bank.	.30	e
7/28	C. Benisch.	Phone F.T. Re: Waddington	.25	e
7/29	C. Benisch.	Phone re auction	.50	
8/4	C. Benisch.	Conf. Hogan Re: Auction.	1.50	
	R. Hogan.	Meeting Benisch, re advertising sale Waddington	1.00	
8/5	C. Benisch.	Review transcript of hearings of 7/16 and 7/24.	1.00	
8/14	C. Benisch.	Work petition for auction sale.	1.50	
	R. Hogan.	Phone conference Benisch, ad - Waddington	1.00	
8/19	C. Benisch.	Phone Hogan re: auction; Work on papers Re: auction.	2.00	
	R. Hogan.	Various correspondence, Tilney.	.50	e
8/20	C. Benisch.	Auction papers.	.25	e
8/21	C. Benisch.	Phone F.T.	.50	
	R. Hogan.	Conversations, Tilney, Waddington.	2.00	
8/25	R. Hogan.	Benisch re ad.	1.00	e
8/26	C. Benisch.	Phone F.T.; Phone Hogan; Draft order Re: Auction.	1.50	e
	R. Hogan.	Correspondence Benisch.	.50	e
8/27	C. Benisch.	Conf. Hogan; phone F.T.	1.50	
8/28	C. Benisch.	Phone F.T. (3 calls), Phone Hogan re: Auction; Prepare papers re: Waddington petition.	2.50	e
	R. Hogan.	Tilney correspondence, phone Benisch, auction.	2.00	
9/2	C. Benisch.	Submit Waddington Order	1.00	
9/3	R. Hogan.	Discussions Greidinger, Benisch - sale Waddington	2.00	
	A. Greidinger.	Conference - Hogan.	2.00	
9/5	C. Benisch.	Phone F.T. (3 times) & Hogan.	1.25	
	R. Hogan.	Conference Tilney - discussion Rosen, Albert Gunther, letter of sale, Manufacturers.	1.50	
9/8	R. Hogan.	Conference Benisch re advertising, sale of Waddington - conference Rosen, placing of ad - conference Klein - correspondence Rosen, Tilney.	2.00	e
	A. Klein.	Conference - Hogan.	1.00	
9/9	C. Benisch.	Phone F.T., Hogan	.50	
	R. Hogan.	Conversations Tilney, Waddington, re superintendent of bank's balance sheets	1.00	
9/10	R. Hogan.	Federal Court, hearing, Tilney - responding phone calls, sale Waddington, ad in paper today.	3.00	e
9/11	C. Benisch.	Phone Hogan & F.T. (2 times)	1.00	e
9/12	C. Benisch.	Phone F.T., Hogan.	.50	e
	R. Hogan.	Phone, Benisch - Tilney.	.50	e
9/13	R. Hogan.	Trip to Waddington, New York.	6.00	
9/15	C. Benisch.	Phone F.T. and Hogan	.50	
9/16	C. Benisch.	Phone, F.T.; Trip to Federal Court for signature on order.	1.50	
9/19	C. Benisch.	Conf. Hogan, Greidinger Re: General-Matters, Phone. F.T. (2 times)	2.50	
	R. Hogan.	Conference Benisch, Klein re Waddington.	2.00	
	A. Greidinger.	Conference - receiver and counsel	2.00	
	A. Klein.	Conference - receiver and counsel	2.00	
9/22	C. Wagner.	Conference Mr. Quillinen re hearings scheduled for 9/23 and 9/24/69.	.25	e
	C. Quillinen.	Conf. Mr. Benisch re auctioneer for sale of Waddington stock; Conf. Mr. Wagner re hearing scheduled for 9/23 and 9/24.	.50	e
	C. Benisch.	Phone Hogan & F.T.	.50	
9/24	C. Wagner.	Attendance at hearing before Judge Edelstein.	2.00	
	C. Quillinen.	Conf. Mr. Wagner re Waddington stock auction.	.25	e
	C. Benisch.	Attendance at auction sale of Waddington Bank Stock and conference with court thereafter.	3.50	
	R. Hogan.	Auction sale Waddington, Total hours phone queries Waddington stock (2 weeks)	44.00	
3/3/70	R. Hogan.	Telephone call, Greidinger, re Waddington stock, threatened law suit.	.50	
		TOTAL HOURS, 1969 and JANUARY 1970	242.95	

April 14, 1969

Mr. Frederick Tilney
Centre Island Road
Oyster Bay, Long Island

Dear Fred:

With reference to your letter dated April 11 concerning the furnishings at Sundown, by no stretch of the imagination are the Receivers prepared at this time to agree that the furnishings are the property of Dorothy. Therefore, as far as the Receivers are concerned, she should not engage any auctioneers for the purpose of the sale thereof.

This is another area which must be thoroughly investigated at the earliest possible moment. Dorothy and you should be prepared to come forward with such proof or evidence as to the ownership thereof as you may have available.

Very truly yours,

I. ALAN HARRIS

IAH/jmj

cc: Mrs. Dorothy M. Tilney
Joseph C. Hogan, Esq.
R. G. Benisch
Mr. Jerry Klein

EXHIBIT E
TO AFF. 3/16/74
67 CIV. 4676

1400

COPY

April 11, 1969

I. Alan Harris, Esq.
292 Madison Avenue
Joseph C. Hogan, Esq.
40 Wall Street
New York, N. Y.

Gentlemen:

In view of the fact that you are planning to sell Sundown to the highest bidder, we are anxious to establish our time table for moving and to determine where we will locate.

It would appear likely that Mrs. Tilney will not wish to retain any of the furnishings in the house with the exception of a few minor pieces and since the furnishings are her property this weekend she is engaging a firm of auctioneers to arrange for the public auction of all of the furniture. Since you have a buyer for the property, it might be well if the buyer would come forward either personally or by agent to select and agree on pieces of furniture that he might wish to purchase from Mrs. Tilney. Mrs. Tilney would appreciate a reply so that the auction may be scheduled.

Very truly yours,

Frederick Tilney

FT/dt

cc: Robert G. Benisch, Esq.

EXHIBIT F
TO AFF. 3/16/74
67 CIV. 4676

1401

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

-against-

TILNEY & COMPANY,
FREDERICK TILNEY,
Defendants.

ORDER

67 Civ. 4676 (DNE)

Upon the verified petition and final report and account of I. Alan Harris and Joseph C. Hogan, sworn to the 31st day of July, 1973, and upon the application for additional allowances of Hertz, Herson & Company sworn to by B. Bernard Greidinger, the 2nd day of October 1973, and upon the affidavits of Joseph C. Hogan sworn to the 28th day of September and the 9th day of October, 1973, the affidavits of Frederick Tilney sworn to the 17th day of April and the 28th day of June, 1972 and the 21st day of September and the 1st day of October, 1973, and the affidavit of I. Alan Harris sworn to the 16th day of October, 1973, and upon the memoranda of Wagner, Quillinan & Tennant, attorneys for the receiver, dated October 16 and November 5, 1973, the memoranda of Frederick Tilney dated October 22 and November 8, 1973, the memorandum of Cadwalader, Wickersham & Taft, attorneys for the defendants, dated October 31, 1973 and February 13th, 1974 and the memorandum of I. Alan Harris dated November 7, 1973, and it appearing that an order to show cause was signed by this Court on the 11th day of September, 1973 directing that the therein named interested parties

-1-

show cause before this Court why an order should not be made granting the

relief requested in the aforementioned petition of I. Alan Harris and Joseph C. Hogan and that proof of service of said order has been filed herein and that a hearing was had before this Court on the 2nd day of October, 1973 pursuant to the aforesaid order to show cause and it further appearing that no objections to the final account herein have been made, and that said final account is in order and should be approved, and this Court having filed its opinion dated the 21st day of February, 1974, it is

ORDERED that the final account of the receiver and former co-receiver as brought down to the date of July 31, 1973 is hereby settled and allowed. and it is further

ORDERED that the application of defendant Frederick Tilney to proceed pro se in the matter of a surcharge is denied, and it is further

ORDERED that the application of Hertz, Herson & Company, accountants to the receiver, for additional compensation for services rendered after this Court's award of compensation in its opinion dated October 19, 1972, is denied, and it is further

ORDERED that the reimbursement of expenses and disbursements of Hertz, Herson & Company, accountants to the receiver, in the amount of $200.80 is approved and the receiver is directed to make payment thereof, and it is further

ORDERED that reimbursement of additional expenses and disbursements of Wagner, Quillinan & Tennant, attorneys for the receiver in the amount of $215.58 is approved and the receiver is directed to make payment thereof,

and it is further

ORDERED that reimbursement of his expenses and disbursements by Joseph C. Hogan, as receiver, in the amount of $945.00 is approved, and it is further

ORDERED that the receiver is authorized and directed to pay into the registry of this Court all funds set aside for any creditors whose claims have been approved but not paid, and it is further

ORDERED that the United States Internal Revenue Service shall be barred from asserting any claim against the receiver or former co-receiver upon the expiration of thirty days from the entry of this order, and it is further

ORDERED that the remaining assets of this estate, to the extent not subject to restraining notices, shall be returned to the defendants herein by the receiver, upon the expiration of the aforesaid bar date, provided that no claim has been asserted against the receiver or former co-receiver therefor, and it is further

ORDERED that upon compliance in all respects with the terms of this order, Joseph C. Hogan and I. Alan Harris, receiver and former co-receiver herein and the sureties

on their bond as such receivers be, and they hereby are, released and discharged from all liability and responsibility as to all things embraced in said final account or determined by this order.

Dated: New York, New York
March 19, 1974

David N. Edelstein
DAVID N. EDELSTEIN
Chief Judge

1404

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	:	67 Div. 4676 (DNE)
-against-	:	AFFIDAVIT
TILNEY & COMPANY, FREDERICK TILNEY, Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH C. HOGAN, being duly sworn, deposes and says:

1. I am the duly appointed, qualified and acting receiver of the assets of the above-captioned defendants.

2. This Court, by an order dated March 19 and filed March 20, 1974, approved the final account of this receiver and the former co-receiver herein. Said order, in pertinent part, also denied the application of defendant Frederick Tilney to proceed pro se in the matter of a surcharge, denied the application of Hertz, Herson & Company for additional allowances, established a 30 day bar date against the Internal Revenue Service and directed that the remaining assets of the estate, to the extent not subject to restraining notices, be returned to the defendants upon the expiration of said bar date, provided that no claim be asserted against the receiver or former co-receiver therefor.

Amended nunc pro tunc on April 19, 1974 to read Rule 4(a) of the Federal Rules of Appellate Procedure. See transcript of April 19, 1974.

3. In view of the fact that one of the parties hereto, to wit, plaintiff Securities and Exchange Commission, is an agency of the United States government, the time to appeal from the aforementioned Order is 60 days from the date of entry thereof (Rule 73 of the Federal Rules of Civil Procedure).

DNE

(In margin in record)

4. I have been advised by my attorneys that they have been personally informed by Mr. Tilney that he intends to file an appeal of the aforementioned order. Moreover, there is a distinct possibility that one or more of the other interested parties hereto may also appeal, particularly Hert., Herson & Company.

5. If an appeal is taken, my attorneys will expect to be compensated for services required in connection therewith and, if further administration is required on my part, I too will expect to be compensated therefor.

6. I find myself in the anomalous position of being a "prevailing party" who has been called upon to turn over property to potential appellants, to wit, the defendants herein.

7. I fear that if the assets of this estate are returned to the defendants, defendant Frederick Tilney will cause said assets to be disposed of, assigned, encumbered, or hidden in such a manner as to render them unavailable if needed in the event of the award of further allowances, costs or other relief.

8. I respectfully request the Court to stay the operation of the portions of the aforesaid order which deal

with the return of assets, until the expiration of the time to appeal, and, if an appeal is taken, pending the determination of the appeal itself.

9. This affidavit is also made in support of an application for an Order to Show Cause why the relief requested above should not be granted.

10. The aforesaid request for an Order to Show Cause is being made so as to obtain the quickest possible disposition of this matter, since time is claimed to be a critical factor by defendant Tilney.

11. No prior application for the relief sought herein has been made.

WHEREFORE, your deponent respectfully requests that the annexed Order to Show Cause be signed and that an order be made staying the operation of certain portions of the order of this Court dated March 19 and entered March 20, 1974, as referred to with particularity above.

Joseph C. Hogan
Joseph C. Hogan

Sworn to before me this
17th day of April, 1974:

Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- against - : 67 Civ. 4676

TILNEY & COMPANY, FREDERICK TILNEY, :

Defendants. :

----------X

B e f o r e:

HON. DAVID N. EDELSTEIN,

Chief Judge

New York, N. Y.
April 19, 1974 - 11:30 a.m.

Appearances:

STUART PERLMUTTER, Esq.
Attorney for the Plaintiff

CADWALADER, WICKERSHAM & TAFT, Esqs.
Attorneys for the Defendants
BY: RICHARD J. WIENER, Esq.

WAGNER, QUILLINAN & TENNANT, Esqs.
Attorneys for the Receiver
BY: ROBERT G. BENISCH, Esq.
ROBERT MULLIGAN, Esq.

SAXE, BACON & BOLAN, Esqs.
Attorneys for Dorothy Tilney
BY: ROY M. COHN, Esq.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

(Case called)

MR. BENISCH: Ready, your Honor.

Your Honor, may it please the Court, this Court made an order to show cause dated April 17, 1974 which provided for certain personal service of the order and the supporting affidavit on the various parties. The service provisions of this order have been complied with, and the original proof of service has been filed with the clerk.

If the Court so desires, I have conformed copy of this proof of service to hand up here today.

THE COURT: Please do.

MR. BENISCH: Your Honor, at the outset I would like to respectfully request the Court to amend nunc pro tunc paragraph 3 of the supporting affidavit of Mr. Hogan herein, dated -- or the affidavit, rather, in support of this motion. Paragraph 3 refers to Rule 73 of the Rules of Civil Procedure. That has been amended. It is presently Rule 4(a) of the Federal Rules of Appellate Procedure. I would ask the Court for permission to amend that nunc pro tunc here.

Your Honor, we are here today to seek an application or an order extending the time which has been provided in the prior order of this Court for the turnover of the assets of this receivership estate to the defendants Frederick Tilney and Tilney & Company.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

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As the Court will recall, an order based on the Court's decision was made on March 19, 1974, which was entered on March 20, 1974, which provided in part that the United States Internal Revenue Service should be barred from asserting any claim against the receiver or co-receiver upon the expiration of thirty days from the entry of the order. Said order went on to further provide that the remaining assets of the estate to the extent not subject to restraining notices shall be returned to the defendants herein by the receiver upon the expiration of the aforesaid bar date.

The bar date or the expiration of the bar date is coming up on April 19, 1974; the thirty days will run.

Subsequent to the entry of the Court's order of March 19, 1974, we had been advised by the defendant, Mr. Tilney, that he intends to appeal certain portions of or all of this order of the Court. This advice has triggered a problem with respect to the receiver, inasmuch as under the Federal Rules Mr. Tilney would have sixty days from the entry of the order in which to appeal the order. Yet the Court's order provides for a turnover of the assets thirty days from the entry of the order.

I might add, your Honor, that this thirty-day provision was inserted in the first instance in order to

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
v.

67 Civ. 4676

had communicated with the Commission and was based, it must be presumed on the

attempt to provide the most expeditious winding up of this estate and the return of the assets to the defendants here and to discharge the receivers.

We did not anticipate at the time this order was entered that an appeal would be filed. I point out that it was only subsequent to the entry of this order and the service that we were advised that an appeal was to be filed by the defendants. This being so, your Honor, if the receiver is required to turn over the assets on April 19 and for a period thereafter Mr. Tilney can file a notice of appeal and does, the receiver will be placed in the position of having divested himself of control of the assets of this estate. If an appeal is filed and if, as will ultimately occur, the receiver and counsel will have to deal with this appeal and prosecute it or defend it, as the case may be, additional administration expenses will be incurred, which by law the receiver and counsel would be reimbursed out of the assets of the receivership estate upon appropriate application for allowances.

However, if the receiver has divested himself of control of the assets, I submit that there will be no assets from which to seek payment of any additional applications for allowances which may be awarded by the Court.

So we are here today, your Honor, to respectfully

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request that the Court order a stay of so much of its prior order of March 19, 1974, as provides for a turnover on April 19 of the assets of this estate. We submit that the Court should order that that portion of the order be stayed for an additional period of thirty days, and in the event an appeal is filed by the defendants herein such stay shall continue until such time as that appeal is finally disposed of. It is only in this way that the receiver can be assured that there will be funds available to pay any additional administration expenses to cover this appeal which might be allowed by the Court.

I would submit that it might be possible in the alternative to provide for a surety bond in an appropriate amount to be posted by the defendants, upon which the receiver would be perfectly willing to turn over the balance of the assets here. But I think the Court can appreciate the position that the receiver is in. It is very possible, if not probable, that if these assets are turned over tomorrow , that if an appeal is filed and additional allowances are awarded, those assets will have been put out of the reach of the receiver by the time it comes around to paying any application for allowances.

So I respectfully request the Court order a stay as I have hereinbefore requested, your Honor.

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MR. WIENER: Your Honor, I am Richard Wiener, of Cadwalader, Wickersham & Taft, on behalf of Tilney and Company and Frederick Tilney. We agreed that a bond would be sufficient, and we are willing to post a bond. The question is what would be an appropriate amount to protect the receiver should Mr. Tilney decide to take an appeal.

We would respectfully submit, your Honor, that a bond in the amount of $10,000 should be sufficient.

MR. BENISCH: Your Honor, may I respond to counsel's comments? Your Honor, there are two factors here with respect to the posting of a bond, and I must confess certain ignorance to one of them. Mr. Tilney has been convicted of a felony in Anchorage, and I am not aware of whether a bonding company will underwrite a bond in those circumstances. I don't know.

Secondly, I believe we have discussed in the past in this proceeding, if not several times, the possibility of posting of bonds, and Mr. Tilney has never been able to do so.

In any event, with respect to the amount of the bond, $10,000 is certainly not anywhere near adequate to cover the anticipated costs of counsel and receiver involved in any appeal which might be taken. I submit to the Court that $250,000 would be more appropriate.

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If the Court decides to give time in which to get a bond, I would then request that the Court stay the order for a particular period of time -- in other words, a deadline -- by which either Mr. Tilney will submit a bond in an appropriate amount with sufficient surety, failing which that stay will be extended as I have previously requested. Because the time in your order of March 19 is up, I believe it is, today. So we do need a stay of execution of that portion of your order, sir.

THE COURT: What is the amount of the estate in the hands of the receiver as best as you can estimate that?

MR. BENISCH: Your Honor, to answer you somewhat indirectly, the estate or assets of the estate in the hands of the receiver consist of, in the large portion, real property, which has a fluctuating value. To the best of my knowledge, I would say, as a ballpark figure only, that we might be possessed of perhaps $150,000 or $200,000 market value quick-sale of the real property. Again, with the real estate market being what it is, and I am not a real estate expert, with all due respect your guess is as good as mine on the value of these properties at the present time, sir.

THE COURT: We would like to make a calculated and reasoned guess, wouldn't we?

MR. BENISCH: Yes, sir.

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THE COURT: If you indicate that the knockdown value -- and I understand that is what you mean -- of the assets in the hands of the receiver would bring about $150,000, then why would you ask for a bond of $250,000?

MR. BENISCH: There is additional property, your Honor, than the real property. There are some securities, which are presently either in the control of the receiver or I believe out with Long Island National Bank, being held by them pending further direction from the receiver. So that there is additional value over the $150,000. The $250,000 I made as a reasonable approximation of the value of the real property. I would say there may possibly be an additional $50,000 or so in personal property. Again, some of this personal property is the subject of a contest or an objection as being owned in part by Mrs. Tilney. It is being held by the bank out there pending further advice, and I do not know what the ultimate outcome would be of an ownership.

MR. WIENER: Yes, your Honor.

MR. COHN: Excuse me, if it please the Court. It would be --

MR. HOGAN: Your Honor, I object to any statements by Mr. Cohn.

THE COURT: Now, will you please be seated. We are

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not going to make this proceeding into a circus, I assure you.

Now, did you wish to say something?

MR. WIENER: Yes, your Honor. I would like to say that we must look to the purpose of the bond. The purpose of the bond is not to protect the total amount of assets which are in the hands of the receiver, but the purpose of the bond would be to protect the receiver against any costs which he might incur.

THE COURT: What is the basis for your computation that $10,000 would be sufficient?

MR. WIENER: Because, having handled appeals, I think that it is a sufficient amount to cover any expenses that he would incur.

THE COURT: Would it embarrass you if I asked you how much your firm charges per hour?

MR. WIENER: Sir, I really am not competent to say that.

THE COURT: Well, I am.

MR. WIENER: Your Honor, one other point. You have been asked to temporarily stay the handing over of the assets to Mr. Tilney, which are supposed to be handed over today pursuant to your previous order.

I think that the assets should be handed over today.

commitment to pay these things as soon as the assets are released. I think this is where we are. If you give us a figure on a bond, permit the release of the assets but condition the filing of the appeal on the prior posting of the bond, we will be able to use these assets.

THE COURT: No, I am not going to dispose of the matter in that fashion at all.

The first ruling I make -- and there is no objection apparently -- is the application to amend paragraph 3 of Mr. Hogan's affidavit nunc pro tunc to make Rule 73 read Rule 4(a), Federal Rules of Appellate Procedure.

MR. WIENER: No objection, your Honor.

THE COURT: My second ruling is that the turnover of the assets of this estate are stayed pending all appeals and the disposition thereof. However, in the event an agreement is reached between the parties as to an appropriate and sufficient undertaking, this Court will then consider amending its order just stated.

The figure that I would think that you might discuss and use for purpose of your negotiation is the figure of $150,000, that apparently being the knockdown value of the assets.

MR. WIENER: Your Honor, excuse me, if I may, if we do reach agreement on the figure, of course we are going to

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need release of the assets before we can obtain the bond, If agreement is reached between counsel as to the fact that a bond will be obtained in an agreed amount, will your Honor consent to allowing the property to be released immediately?

THE COURT: I will consent to nothing in advance. If you reach an agreement, you can apply to me on Monday.

MR. COHN: Your Honor, if I might respectfully ask you this, what would our jurisdiction be to apply to the United States Court of Appeals at this juncture?

THE COURT: Mr. Cohn, I have known you a long time, and you are a sophisticated lawyer, and I think you could very quickly find the answer to that.

MR. COHN: All right, I think I will very quickly be there. Thank you.

MR. BENISCH: Thank you, your Honor.

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ENDORSEMENT

That portion of the Order of this Court dated M
and entered March 20, 1974 which provides as follows:

> ORDERED that the remaining assets of this
> estate, to the extent not subject to restrain-
> ing notices, shall be returned to the defendant
> herein by the receiver, upon the expiration of
> the aforesaid bar date, provided that no claim
> has been asserted against the receiver or forme
> co-receiver therefor,

is hereby stayed until the expiration of the time to t
appeal and, if an appeal is taken, pending the disposi
of the appeal. See transcript of hearing held on April
1974.

SO ORDERED.

DAVID N. EDELSTEI
Chief Judge

Dated: New York, N. Y.
April 19, 1974

U.S. DISTRICT COURT
FILED
APR 19 1974
S. D. OF N. Y.

WM

MICROFILE
APR 22 1974